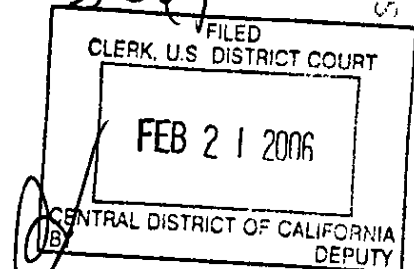
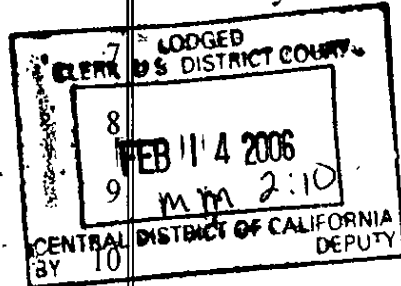


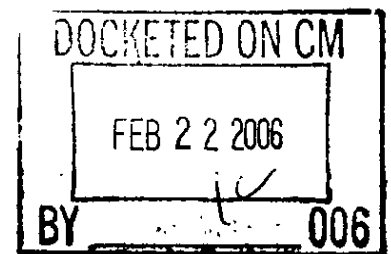
1 Gregory G. Petersen (SBN 77744)  
 2 Rex Hwang (SBN 221079)  
 3 CASTLE, PETERSEN AND KRAUSE, LLP  
 4 Attorneys At Law  
 5 4675 MacArthur Court, Suite 1250  
 6 Newport Beach, CA 92660  
 7 Telephone: (949) 417-5600  
 8 Facsimile: (949) 417-5610  
 9 atty@cpk-law.com  
 10 Attorneys for Plaintiffs



UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

11 EDWARD BREHM,  
 12 Plaintiff,  
 13 vs.  
 14 CITY OF LOS ANGELES; and  
 15 DOES 1 through 10, inclusive,  
 16 Defendants.

CASE NO. CV 02-4979-JFW (JWJx)  
 Assigned to the Honorable John F. Walter  
 [PROPOSED] STIPULATED  
 JUDGMENT



17  
 18  
 19 Plaintiffs James Zourek, Jericho Velasquez, and Mell Hogg (hereinafter  
 20 collectively referred to as "Plaintiffs"), and Defendant City of Los Angeles  
 21 (hereinafter "City" or "Defendant") through their respective counsel of record,  
 22 hereby agree as follows:

23 1. Plaintiffs and the City have executed Settlement Agreements and  
 24 Releases of All Claims, including attachments hereto (collectively "Settlement  
 25 Agreements") that resolve all of Plaintiffs' claims raised pursuant to the Fair  
 26 Labor Standards Act, 29 U.S.C. § 201-219, and the Portal to Portal Act of 1947,  
 27 29 U.S.C. §§ 251-262 (the Fair Labor Standards Act and the Portal to Portal Act of  
 28 1947 shall be referred to collectively as "FLSA") in this action, without any

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 FEB 23 2006

1 admission of liability by the City. Copies of the Settlement Agreements are  
2 attached hereto. Exhibit A (Settlement Agreement Mell Hogg), Exhibit B  
3 (Settlement Agreement Jericho Velasquez), and Exhibit C (Settlement Agreement  
4 James Zourek).

5 2. Each of the Plaintiffs have received payment under the Settlement  
6 Agreement pursuant to the terms of the Settlement Agreement.

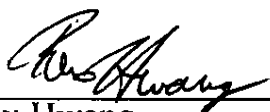
7 3. Pursuant to the terms of the Settlement Agreement, Plaintiffs and the  
8 City consent to the Court's dismissal with prejudice of Plaintiffs' FLSA claims in  
9 this action.

10  
11 Stipulated and Agreed:

12  
13 DATED:

CASTLE, PETERSEN & KRAUSE LLP

14  
15  
16 By:

  
Rex Hwang  
Attorneys for Plaintiffs

17  
18 DATED:

LIEBERT CASSIDY WHITMORE LLP

19  
20  
21 By:

Brian P. Walter  
Attorneys for Defendant

22  
23  
24 IT IS ORDERED, ADJUDGED AND DECREED that:

- 25 1. The Settlement Agreements and Releases of All Claims and  
26 attachments thereto, executed by Plaintiffs and the City, copies of  
27 which are attached hereto and made a part hereof, are ratified and  
28 approved by the Court and incorporated into this Judgment.

admission of liability by the City. Copies of the Settlement Agreements are attached hereto. Exhibit A (Settlement Agreement Mell Hogg), Exhibit B (Settlement Agreement Jericho Velasquez), and Exhibit C (Settlement Agreement James Zourek).

2. Each of the Plaintiffs have received payment under the Settlement Agreement pursuant to the terms of the Settlement Agreement.

3. Pursuant to the terms of the Settlement Agreement, Plaintiffs and the City consent to the Court's dismissal with prejudice of Plaintiffs' FLSA claims in this action.

Stipulated and Agreed:

DATED:

CASTLE, PETERSEN & KRAUSE LLP

By:

Rex Hwang  
Attorneys for Plaintiffs

DATED: 2/10/2006

LIEBERT CASSIDY WHITMORE LLP

By:

Brian P. Walter  
Brian P. Walter  
Attorneys for Defendant

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Settlement Agreements and Releases of All Claims and attachments thereto, executed by Plaintiffs and the City, copies of which are attached hereto and made a part hereof, are ratified and approved by the Court and incorporated into this Judgment.

2. Plaintiffs' FLSA claims are dismissed with prejudice.

IT IS SO ORDERED :

DATED:

212106

Honorable John F. Walter  
United States District Court Judge

000000

SCANNED

SCANNED

## **SETTLEMENT AGREEMENT AND RELEASE**

### **RECITALS**

Beginning in 2000, a number of present and former police officers in the Los Angeles Police Department ("LAPD") individually retained The Petersen Law Firm to bring a lawsuit against their employer, the City of Los Angeles ("City"), a municipal corporation. Plaintiffs sought relief for an alleged violation of the federal Fair Labor Standards Act (hereinafter "FLSA"), 29 U.S.C. § 201 et seq., in regard to the payment of overtime, in an action entitled *Edward Brehm v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. CV-02-4979-JFW (JWJx) (formerly SACV 00-748-GLT (MLGx)) ("the Brehm litigation" or "the Brehm action").

In 2002, present and/or former police officers in the LAPD individually retained The Petersen Law Firm to file an action against the City, entitled *Stella Lara v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. 02-2185-GHK (RCx) ("the Lara litigation" or "the Lara action"), alleging that the City violated the provisions of the FLSA in regard to the payment of overtime.

The parties agreed on a settlement on or about January 9, 2003 on behalf of all Brehm and Lara plaintiffs, with the exception of plaintiffs Mell Hogg ("Hogg"), Jericho Velasquez ("Velasquez") and James Zourek ("Zourek"). Hogg, Velasquez and Zourek were not parties to the January 9, 2003 Settlement Agreement because they each were serving abroad in the United States military, and their claims could not be settled pursuant to the Soldiers and Sailors Civil Relief Act, 50 U.S.C. Appx., § 521. Hogg, Velasquez and Zourek have now returned from military leave, and the parties hereby enter into the following Settlement Agreement to resolve their claims in the manner set forth below:

Ex. A 1-31  
4

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**1. PARTIES**

This Settlement Agreement ("Agreement") is made by and between Hogg, a named plaintiff in the Brehm action and/or the Lara action, and the City, a municipal corporation.

**2. DISPOSITION OF CLAIMS**

The parties, with the exception of Hogg, Velasquez and Zourek, due to their military leave, previously agreed to a comprehensive release in, and global settlement of, the Brehm and Lara actions. A true and correct copy of the January 9, 2003 Settlement Agreement is attached hereto as Exhibit "1," and the terms of said Settlement Agreement are incorporated herein by reference. The January 9, 2003 Settlement Agreement will hereinafter be referred to as "Exhibit 1" in this Agreement.

The purpose of this Agreement is to resolve and settle all outstanding claims, issues, and disputes in the Brehm and/or Lara actions brought by Hogg against the City for the City's alleged failure to compensate Hogg under the FLSA and any other applicable federal and state laws. In consideration of the City's payment of \$20,791.05 (\$10,392.06 for back pay, \$3,470.95 for liquidated damages and \$6,928.04 for attorneys' fees) to Castle, Petersen & Krause, LLP on behalf of Hogg, Hogg agrees to settle and release all the claims described more fully in Exhibit 1 to this Agreement. Hogg specifically agrees to waive any and all wage claims under federal and state law existing at the time Exhibit 1 was executed, including but not limited to, FLSA wage and hour claims and known FLSA retaliation claims, but excluding any workers' compensation claims. As set forth in Exhibit 1, nothing in this settlement will alter the terms and conditions of the prior agreements in the actions styled *Michael L. Kimpel v. Willie Williams* action, C.D. Cal. No. CV 93-3441-GHK(RNBx) and *Michael C. Huff v. Bernard Parks*, C.D. Cal. No. CV 98-10245-GHK(RNBx). Moreover, the parties expressly acknowledge and agree that Hogg will *not*

Ex. A 2-31

be waiving any claims he may have, if any, in the pending action styled *Roberto Alaniz v. City of Los Angeles*, C.D. Cal. No. CV 04-8592-GHK (JWJx) ("Alaniz lawsuit" or "Alaniz action"), by virtue of this Agreement.

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### 3. WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542

The parties understand that this Agreement extends to all grievances, disputes, or claims of every nature and kind, known or unknown, suspected or unsuspected, which are related to the claims of Hogg in the Brehm and Lara actions for unpaid wages, as described in the Recitals of Exhibit 1, including, but not limited to, any and all wage claims under the FLSA and under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims and claims Hogg may have in the pending Alaniz action. The parties understand that this release does not address claims relating to any conduct or activity which occurs after the date of the execution of Exhibit 1, i.e., January 9, 2003. The parties further acknowledge that any and all rights granted them under section 1542 of the California Civil Code, which are related to the claims of Hogg for unpaid wages, are hereby expressly waived. This section 1542 waiver does not include retaliation claims. Section 1542 of the California Civil Code reads as follows:

SECTION 1542. CERTAIN CLAIMS AFFECTED BY

GENERAL RELEASE.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM



OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
HER SETTLEMENT WITH THE DEBTOR.

SCANNED

#### 4. RELEASE

Plaintiff Hogg and all of his respective attorneys, agents, and assignees, do hereby fully and forever release and discharge each other, the City and its past or present governing bodies, boards, officers, directors, attorneys, and agents, from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands which are related to his claims in the Brehm and Lara actions regarding the City's alleged violations of any and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage and hour claims under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims and claims Hogg may have in the pending Alaniz action, if any, as described more fully in the Recitals of Exhibit 1.

The City hereby fully and forever releases and discharges Hogg and all of his respective attorneys, agents, and assignees from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands arising from plaintiffs' claims in the Brehm and Lara actions regarding the City's alleged violations of any and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage and hour claims under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims and claims Hogg may have in the pending Alaniz action, if any, as described in the Recitals of Exhibit 1.

SCANNED

**5. PAYMENT OF SETTLEMENT AMOUNTS AND DISMISSAL OF  
BREHM AND LARA ACTIONS**

Within thirty (30) days after the execution of this Agreement by the parties and approval as to form and content by their counsel, the City shall deliver checks and/or warrants to Hogg's attorneys of record, Castle, Petersen & Krause, LLP, in the following amounts:

a. The sum of \$10,392.06 for back pay (minus applicable withholdings as specified in section 12 of this Agreement) and \$3,470.95 for liquidated damages, made payable by separate checks and/or warrants to "Mell Hogg."

b. The sum of \$6,926.04 to Hogg's attorneys of record, made payable by check and/or warrant to "Castle, Petersen & Krause, LLP."

Within fourteen (14) calendar days after the City delivers checks and/or warrants to Hogg's counsel of record in the amounts specified herein, Hogg's counsel of record shall file with the District Court all documents necessary to effectuate a stipulated judgment concerning Hogg's claims in the Brehm and Lara actions.

**6. DISCLOSURES AND REPRESENTATIONS**

**a. CONSULTATION WITH COUNSEL**

Plaintiff Hogg has been informed of the opinion of his counsel, Gregory G. Petersen of Castle, Petersen & Krause, LLP, with respect to the advisability of accepting the terms of this Agreement, and with respect to the releases, waivers, and all matters contained herein. Hogg, in accepting the settlement, agrees to the terms herein and holds harmless all attorneys, agents, servants or others acting relevant thereto. The City has had sufficient time to consult with

SCANNED

counsel with respect to the advisability of executing this Agreement, and with respect to the releases, waivers, and all matters contained herein. The City and Hogg acknowledge that they have executed this Agreement without fraud, duress, or undue influence.

**b. NO RELIANCE ON PRIOR REPRESENTATIONS**

Statements made in the past have been modified by changing circumstances. Plaintiff Hogg and the City acknowledge that the circumstances in this settlement are unique. Hogg and any other officer, agent, employee, representative, or attorney, have not made any statements, representations, or promises to the City regarding any facts which may be relied upon in executing this Agreement, except as expressly stated in this Agreement. Neither the City, nor any other officer, agent, employee, representative, nor attorney, has made any statement, representation, or promise to Hogg regarding any facts which may be relied upon in executing this Agreement, except as expressly stated in this Agreement.

**c. VOLUNTARY AND KNOWING WAIVER OF RIGHT**

Each party acknowledges that he or it has carefully read this Agreement and has been advised fully by legal counsel of the legal and binding effect of its terms. Each party acknowledges that the only promises made to induce him or it to sign this Agreement are those stated herein. Having been fully advised and informed, each party voluntarily enters into this Agreement and the waiver of rights covered by this Agreement. Hogg realizes that he has a right under the FLSA or any other federal or state laws to minimum wages and unpaid overtime as set forth in the FLSA or any other federal or state laws. Each party agrees that he or it is entering into this Settlement Agreement because of uncertainty over the outcome of the litigation and the potential for Hogg to receive anywhere from no damages to full liquidated damages and attorneys' fees should the Brehm and/or Lara actions proceed to a final judgment and is therefore

not waiving any entitlement to overtime that he/it possessed under the FLSA or any other federal or state laws.

Each party understands, acknowledges, and agrees that this is a compromise settlement of disputed claims, and that nothing herein shall be deemed or construed at any time or for any purpose as an admission of the merits of any claim or defense.

**d. ASSIGNMENT OF RIGHTS BY PLAINTIFF**

Except for such assignments, transfers, or grants which may have occurred upon operation of law, the parties have not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, causes of action, obligations, liens, judgments, orders, damages, liabilities, losses, costs and expenses of any kind, in law or in equity, whether known or unknown, that parties now hold, will ever hold, or have ever held against the other related to this case, including, but not limited to: 1) any and all claims, demands, or causes of action reflected in the lawsuit; 2) any and all claims, demands, or causes of action arising out of or in any way connected with any transactions, occurrences, acts or omissions set forth or alleged in the lawsuit; or 3) any and all claims, demands, or causes of action arising out of or in any way connected with any transactions, occurrences, acts or omissions occurring prior to the execution of Exhibit 1.

**7. REIMBURSEMENTS AND ATTORNEYS' FEES**

The parties further agree that the amounts to be paid by the City to Hogg's counsel of record, Castle, Petersen & Krause, LLP, constitute full compensation of the attorneys' fees and costs to which plaintiffs are entitled by law from the City. Any additional fees and/or costs associated with the prosecution of the Brehm and Lara actions shall be borne solely by the Brehm and Lara plaintiffs and/or their counsel. However, if any action at law or in equity,

including any action for declaratory relief, is brought to enforce any or all of the provisions of this Agreement, the prevailing party will be entitled to and shall be awarded reasonable attorneys' fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

#### **8. ENTIRE AGREEMENT IS INTEGRATED**

The parties agree that the obligations contained in this Agreement are the sole and only consideration for it, and that no representations or inducements have been made by any party, or such party's employees, agents, or attorneys, except as specifically set forth in this Agreement. There is no other Agreement, written or oral, express or implied, between the parties with respect to the subject matter of this Agreement except as explicitly referred to herein. This Agreement supersedes any previous oral or written agreements or understandings between the parties regarding any matter contained in the Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a written agreement executed by all the parties to this Agreement.

#### **9. SUCCESSORS**

This Agreement shall be binding upon Hogg and his heirs, representatives, executors, administrators, successors and assigns, and shall inure to the benefit of each and all of the heirs, representatives, executors, administrators, successors, and assigns.

#### **10. JOINT DRAFTING OF AGREEMENT**

Hogg, through his attorneys, and the City, through its attorneys, have participated in the drafting of this Agreement. The attorneys for all parties by their signature on this Agreement approve it as to form, and accordingly, the normal rule of construction to the effect that any

ambiguities are to be resolved against the drafting parties will not be employed in any interpretation of this Agreement.

#### **11. STIPULATED JUDGMENT**

Upon execution by the parties and the Court's determination that the proposed settlement amount is fair, adequate, and reasonable, counsel for Hogg shall prepare the necessary documents and submit this Agreement to the Court for entry of a stipulated judgment.

#### **12. WITHHOLDING OF TAXES FROM SETTLEMENT AMOUNTS**

The parties agree that the payments described in section 5 of this Agreement are subject to the tax treatment described below. The amount specified in subparagraph "a" shall be subject to legally required deductions and withholdings. The amounts specified in subparagraphs "b" and "c" shall be paid without withholdings.

a. **Lost Income/Back Pay:** As to the payment of \$10,392.06 to Hogg in settlement of all claims, the parties agree that this amount shall be subject to income tax and other legally required withholding, and will be reported by the City as income to Hogg on an IRS Form W-2.

b. **Liquidated Damages:** As to the payment of \$3,470.95 to Hogg in settlement of all claims, the parties agree that this amount represents liquidated damages and that this amount shall not be subject to income tax or other withholdings. The City will issue an IRS Form 1099 to Hogg in the amount of \$3,470.95.

c. **Attorneys' Fees:** As to the payment of \$6,928.04 paid to Hogg's counsel of record, Castle, Petersen & Krause, LLP, for attorneys' fees incurred on Hogg's behalf, the City will issue an IRS Form 1099 to Castle, Petersen & Krause, LLP in the amount of \$6,928.04.

SCANNED

Ex. A 9-31  
12

The attorneys for the City and for Hogg make no warranty, representation or characterization regarding the tax obligations or consequences related to this Agreement. Hogg and/or his counsel of record are solely responsible for any and all taxes associated with the payments made to Hogg and his counsel of record under this Agreement.

SCANNED

### 13. SEVERABILITY

This Agreement shall be considered severable, such that if any provision or part of the Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement shall remain in force and effect to the extent allowed by law, and all other provisions or parts shall remain in full force and effect.

MELL HOGG

DATED: December 26, 2005By: Mell Hogg

Mell Hogg, Plaintiff

CITY OF LOS ANGELES

DATED: December \_\_, 2005

By: \_\_\_\_\_

Gary Geuss, Esq.  
Chief Assistant City Attorney

APPROVED AS TO FORM:

CASTLE, PETERSEN &amp; KRAUSE LLP

DATED: December \_\_, 2005

By: Gregory G. PetersenGregory G. Petersen, Esq.  
Attorneys for Plaintiff  
MELL HOGG

LIEBERT CASSIDY WHITMORE

DATED: December \_\_\_\_, 2005

By: \_\_\_\_\_

Brian P. Walter, Esq.  
Attorneys for Defendant  
CITY OF LOS ANGELES

SCANNED



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settlement of all claims, the parties agree that this amount represents liquidated damages and that this amount shall not be subject to income tax or other withholdings. The City will issue an IRS Form 1099 to Hogg in the amount of \$3,470.95.

c. **Attorneys' Fees:** As to the payment of \$6,928.04 paid to Hogg's counsel of record, Castle, Petersen & Krause, LLP, for attorneys' fees incurred on Hogg's behalf, the City will issue an IRS Form 1099 to Castle, Petersen & Krause, LLP in the amount of \$6,928.04.

The attorneys for the City and for Hogg make no warranty, representation or characterization regarding the tax obligations or consequences related to this Agreement. Hogg and/or his counsel of record are solely responsible for any and all taxes associated with the payments made to Hogg and his counsel of record under this Agreement.

### 13. SEVERABILITY

This Agreement shall be considered severable, such that if any provision or part of the Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement shall remain in force and effect to the extent allowed by law, and all other provisions or parts shall remain in full force and effect.

MELL HOGG

DATED: December 27, 2005

By: \_\_\_\_\_  
Mell Hogg, Plaintiff

CITY OF LOS ANGELES

DATED: December 27, 2005

By:   
Gary Geuss, Esq.  
Chief Assistant City Attorney

APPROVED AS TO FORM:

10

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15 Ex. A 12-31

LIEBERT CASSIDY WHITMORE

DATED: January 5, 2006

By:

*Brian P. Walter*

Brian P. Walter, Esq.  
Attorneys for Defendant  
CITY OF LOS ANGELES

SCANNED

1780072E LO160-014

## 1 SETTLEMENT AGREEMENT AND RELEASE

SCANNED

2  
3 RECITALS

4 Beginning in 2000, a number of present and former police officers in the Los Angeles  
5 Police Department ("LAPD") individually retained The Petersen Law Firm to bring a lawsuit  
6 against their employer, the City of Los Angeles ("City"), a municipal corporation. Plaintiffs  
7 sought relief for an alleged violation of the federal Fair Labor Standards Act (hereinafter  
8 "FLSA"), 29 U.S.C. § 201 *et seq.*, in regard to the payment of overtime, in an action entitled  
9 *Edward Brehm v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. CV-02-4979-JFW  
10 (JWJx) (formerly SACV 00-748-GLT (MLGx)) ("the *Brehm* litigation" or "the *Brehm* action");

11 One provision of the FLSA, 29 U.S.C. § 216(b), allows employees to join a  
12 representative collective action under the FLSA by filing consents to join with the District Court,  
13 and approximately 573 present or former LAPD officers joined the *Brehm* litigation prior to the  
14 District Court-imposed deadline of April 1, 2001. Since the filing of the lawsuit, about 80  
15 plaintiffs have been dismissed from the litigation, leaving four hundred ninety-three (493)  
16 plaintiffs to participate in the terms of this Settlement Agreement and Release;

17 In 2002, present and/or former police officers in the LAPD individually retained The  
18 Petersen Law Firm to file an action against the City, entitled *Stella Lara v. City of Los Angeles*,  
19 U.S. District Court, C.D. Cal. No. 02-2185-GHK (RCx) ("the *Lara* litigation" or "the *Lara*  
20 action"), alleging that the City violated the provisions of the FLSA in regard to the payment of  
21 overtime;

22 About 17 present and/or former police officers have joined the *Lara* litigation as of the  
23 stipulated opt-in cut-off deadline of August 28, 2002. The allegations in the *Brehm* and *Lara*  
24 actions are essentially the same, although not every claim is alleged by every plaintiff;

25 The *Brehm* and *Lara* plaintiffs claim that the City violated the FLSA, and other  
26 applicable federal and state wage laws, by requiring the plaintiffs to work overtime hours without  
27 compensation. Plaintiffs allege they were told or pressured by their supervising officers not to  
28 submit an overtime slip, but rather to adjust or flex their schedules, known as "white time."

1 Plaintiffs allege they could not adjust off all of the hours of uncompensated overtime they had  
2 accumulated within the same deployment period in which the hours were worked, and in some  
3 circumstances were never able to use those "white time" hours. On some of the occasions that  
4 plaintiffs did in fact adjust their schedules, plaintiffs allege that the hours were taken off at the  
5 rate of only one hour off for each hour (hour for hour or "straight time") of overtime worked,  
6 instead of at the time and a half premium rate.

7 Plaintiffs asserted three additional specific claims as to the City's alleged violations of 29  
8 U.S.C. § 207(k) and 29 U.S.C. § 207(o), in regards to the City's denials of the plaintiffs' requests  
9 to be paid overtime compensation and the widespread implementation of an alleged unofficial  
10 compensatory time off system. The first claim asserts that the City required plaintiffs to start  
11 working before their regularly scheduled start of watch in order to prepare for roll call without  
12 compensation. The second claim asserts that the City required plaintiffs to work through their  
13 scheduled meal period without compensation. The third claim asserts that the City required  
14 plaintiffs to work past their regularly scheduled end of watch without compensation. The City  
15 denies these claims. Plaintiffs allege the City willfully violated 29 U.S.C. § 206, the minimum  
16 wage provision of the FLSA, by failing to pay for all overtime hours worked, and the City failed  
17 to keep or maintain any records of each of the plaintiffs' actual number of hours worked, in  
18 violation of 29 U.S.C. § 211(c). The parties dispute whether any hours were being worked  
19 without compensation.

20 The parties have already expended millions of dollars in costs and attorney's fees during  
21 the litigation of the *Brehm* and *Lara* actions. Had the *Brehm* and *Lara* actions not settled, the  
22 parties expected years of continued litigation at a cost of millions of additional dollars in  
23 attorneys' fees. The settlement was reached after extensive negotiations;

24 Had these actions not settled as set forth hereinafter, the parties were anticipating a trial in  
25 June 2003 on the claims of each plaintiff that they were unlawfully denied the payment of  
26 overtime compensation, which could have entailed hundreds of depositions and trials of each  
27 claim, including individual discovery and trial of each claim by each plaintiff that

28 ///

1 uncompensated hours were worked. The parties anticipated that this aspect of the litigation alone  
2 would have consumed years of litigation at immense cost to both sides;

3       Additionally, the parties anticipated litigating whether plaintiffs were entitled to  
4 compensation for "gap time," whether the City could offset certain payments to plaintiffs against  
5 any FLSA or state law overtime liability, whether an average of plaintiffs' estimated range of  
6 hours worked could be used to determine damages, and whether the City acted in good faith or  
7 willfully violated the FLSA or any other applicable federal or state laws. The parties also took  
8 into account the unpredictability of recovery, which for the failure to pay overtime for time  
9 worked could have been as great as full liquidated damages or as little as nothing, depending on  
10 whether the City was able to establish that it acted in good faith pursuant to 29 U.S.C. § 260.  
11 The parties fully expected that whatever the outcome in the District Court, there was a high  
12 probability of appeal by both sides on numerous issues. After numerous hours of negotiations  
13 and evaluation of the merits and potential damages, the parties view this settlement as a  
14 compromise of the risks attendant to both sides in continuing the litigation. The City admits no  
15 liability but settles the matter solely due to the costs of litigating these actions;

16       The parties hereby enter into the following Settlement Agreement:

17       **1. PARTIES:**

18       This Settlement Agreement ("Agreement") is made by and between the named plaintiffs  
19 in *Edward Brehm v. City of Los Angeles*, C.D. Cal. No. CV-02-4979-JFW (JWJx) (formerly  
20 SACV 00-748-GLT (MLGx)), and all persons who have filed a consent to join the *Brehm* action  
21 (hereinafter "*Brehm* plaintiffs"), and Stella Lara and all persons who have filed a consent to join  
22 the *Stella Lara v. City of Los Angeles*, No. 02-2185-GHK (RCx) action (hereinafter "*Lara*  
23 plaintiffs"), collectively referred to as "plaintiffs", and the City of Los Angeles (hereinafter  
24 "City"), a municipal corporation. Although the *Brehm* and *Lara* actions have not yet been  
25 consolidated by the Court, the parties agree that the cases are related and should be deemed  
26 consolidated.

27 ///

28 ///

SCANNED

1           **2.     DEFINITIONS:**

2                   **2.1     LAPD:**

3           As used in this Agreement, "LAPD" refers to the Los Angeles Police Department.

4                   **2.2     SWORN EMPLOYEE:**

5           As used in this Agreement, "sworn employee" refers to a sworn employee of the LAPD  
6 holding the rank of lieutenant or below.

7                   **2.3     FLSA:**

8           As used in this Agreement, "FLSA" refers to the Fair Labor Standards Act of 1938, 29  
9 U.S.C. §§ 201-219 and the Portal to Portal Act of 1947, 29 U.S.C. §§ 251-262.

10                   **2.4     DEPLOYMENT PERIOD**

11           As used in this Agreement, "Deployment Period" ("DP") refers to a sworn employee's  
12 twenty-eight (28) day work period.

13                   **2.5     OVERTIME:**

14           As used in this Agreement, unless otherwise indicated, "overtime" refers to both FLSA  
15 overtime and non-FLSA overtime.

16                   **2.6     FLSA OVERTIME:**

17           As used in this Agreement, "FLSA overtime" refers to hours actually worked by a sworn  
18 employee of the LAPD during a twenty-eight (28) day work period (deployment period) which  
19 exceed one hundred seventy-one (171) hours.

20                   **2.7     NON-FLSA OVERTIME:**

21           As used in this Agreement, "non-FLSA overtime" refers to the compensation of a sworn  
22 employee with overtime pursuant to the Memorandum of Understanding for the Police Officers,  
23 Lieutenant and Below Representation Unit with the City for any hours worked or activities  
24 which are not FLSA overtime hours.

25                   **2.8     WHITE TIME:**

26           As used in this Agreement, "white time" refers to unofficial compensatory time off given  
27 to plaintiffs for working overtime hours.

28    ///

1                   **2.9    EXTENDED END OF WATCH:**

2                   As used in this Agreement, "extended end of watch" time refers to time worked past a  
3 sworn employee's regularly scheduled watch (duty day).

4                   **2.10   ROLL CALL PREPARATION:**

5                   As used in this Agreement, "roll call preparation" refers to time worked before or prior to  
6 a sworn employee's start of watch (duty day) to prepare for roll call.

7                   **2.11   CODE 7**

8                   As used in this Agreement, "Code 7" refers to a sworn employee's meal period during  
9 their scheduled watch hours, which may be either a 30 minute or a 45 minute break, depending  
10 on rank and assignment.

11                   **2.12   CLASS COUNSEL:**

12                   As used in this Agreement, "Class Counsel" refers to Gregory G. Petersen, Esq., the  
13 attorney representing the *Brehm* and *Lara* plaintiffs.

14                   **3.    CLASS STATUS:**

15                   **3.1    STIPULATION OF FACT:**

16                   The *Brehm* and *Lara* actions are representative collective/class actions under section  
17 216(b) of the FLSA. Each plaintiff in *Brehm* or *Lara* who was not named in the complaints filed  
18 a consent to join the actions. Each of the plaintiffs herein have common questions of law and  
19 fact which predominate.

20                   **3.2    CLASS COUNSEL:**

21                   Gregory G. Petersen, Esq., has been designated to be Class Counsel for plaintiffs in the  
22 *Brehm* and *Lara* actions.

23                   **4.    PURPOSE OF AGREEMENT:**

24                   The purpose of this Agreement is to resolve and settle all outstanding claims, issues, and  
25 disputes in the *Brehm* and *Lara* actions brought by plaintiffs against the City for the City's  
26 alleged failure to compensate plaintiffs for all hours worked under the FLSA and any other  
27 applicable federal and state laws. The parties agree to a comprehensive release in, and global  
28 settlement of, the *Brehm v. City of Los Angeles* and *Lara v. City of Los Angeles* actions. The

1 plaintiffs in these actions agree to settle any and all wage claims under federal and state law,  
2 including, but not limited to, FLSA wage and hour claims and known FLSA retaliation claims,  
3 but excluding any workers' compensation claims. However, nothing in this settlement will alter  
4 the terms and conditions of the prior agreements in the *Michael L. Kimpel v. Willie Williams*  
5 action, C.D. Cal. No. CV 93-3441-GHK(RNBx), and in the *Michael C. Huff v. Bernard Parks*,  
6 C.D. Cal. No. CV 98-10245-GHK(RNBx).

7 The claims of plaintiffs which are being compromised are set forth above in the Recitals  
8 of this Agreement. The parties dispute each of the issues as set forth above in the Recitals, and  
9 the City denies the plaintiffs' allegations as set forth above in the Recitals. The parties wish to  
10 finally settle and resolve all disputes and controversies regarding claims under the FLSA, and  
11 other applicable federal and state wage laws, but excluding any workers' compensation claims, in  
12 order to make their peace and to avoid the uncertainties of further litigation and the expense  
13 incident thereto.

14 **5. WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542:**

15 The parties understand that this Agreement extends to all grievances, disputes, or claims  
16 of every nature and kind, known or unknown, suspected or unsuspected, which are related to  
17 Plaintiffs' claims in the *Brehm* and *Lara* actions for unpaid wages, as described in the Recitals of  
18 this Agreement, including, but not limited to, any and all wage claims under the FLSA and under  
19 state law, including known retaliation claims under the FLSA related to the *Brehm* and *Lara*  
20 actions, but excluding workers' compensation claims. The parties understand that this release  
21 does not address claims relating to any conduct or activity which occurs after the date of the  
22 Court's entry of judgment which, pursuant to paragraph 8.2, the parties expect will occur on  
23 December 16, 2002. The parties further acknowledge that any and all rights granted them under  
24 section 1542 of the California *Civil Code*, which are related to Plaintiffs' claims for unpaid  
25 wages, are hereby expressly waived. This section 1542 waiver does not include retaliation  
26 claims. Section 1542 of the California *Civil Code* reads as follows:

27 **SECTION 1542. CERTAIN CLAIMS AFFECTED BY GENERAL**  
28 **RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**



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1 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST  
2 IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
3 WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED  
4 HIS SETTLEMENT WITH THE DEBTOR.

5 **5.1 RELEASE:**

6 Plaintiffs, and all of their respective attorneys, agents, and assignees, do hereby fully and  
7 forever release and discharge each other, the City and its past or present governing bodies,  
8 boards, officers, directors, attorneys, and agents, from any and all causes of action, actions,  
9 judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands  
10 which are related to plaintiffs' claims in the *Brehm* and *Lara* actions regarding the City's alleged  
11 violations of any and all wage laws, including but not limited to FLSA wage and hour claims,  
12 and applicable wage and hour claims under state law, including known retaliation claims under  
13 the FLSA related to the *Brehm* and *Lara* actions, but excluding workers' compensation laws, as  
14 described in the Recitals of this Agreement.

15 The City hereby fully and forever releases and discharges plaintiffs and all of their  
16 respective attorneys, agents, and assignees from any and all causes of action, actions, judgments,  
17 liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands arising from  
18 plaintiffs' claims in the *Brehm* and *Lara* actions regarding the City's alleged violations of any  
19 and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage  
20 and hour claims under state law, including known retaliation claims under the FLSA related to  
21 the *Brehm* and *Lara* actions, but excluding workers' compensation laws, as described in the  
22 Recitals of this Agreement.

23 **6. PAYMENT AND PAYMENT SCHEDULES**

24 **6.1 BREHM AND LARA PLAINTIFFS**

25 The total sum to be paid by the City pursuant to this Agreement is six million seven  
26 hundred twenty thousand dollars (\$6,720,000) payable as set forth in the Confidential  
27 Disbursement Order ("Attachment A") of the Agreement.

28 ///

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1 Each of the following must occur prior to the City paying any funds pursuant to this  
2 Agreement:

- 3 a) Notice of this settlement is provided to all *Brehm* and *Lara*  
4 plaintiffs by November 7, 2002;  
5 b) Plaintiffs are provided an opportunity to object to the proposed  
6 settlement by November 25, 2002;  
7 c) A hearing is held on December 9, 2002 at 1:30 p.m. regarding any  
8 of the plaintiffs' objections to the proposed settlement, if any;  
9 d) The Court approves of the terms of this Agreement on  
10 December 10, 2002;  
11 e) Plaintiffs are permitted to opt-out of this settlement by dismissing  
12 their claims without prejudice by December 13, 2002; and  
13 f) The Court enters a stipulated judgment on December 18, 2002.

14 The six million seven hundred twenty thousand dollars (\$6,720,000) shall be divided in  
15 accordance with the Confidential Disbursement Order filed with the Court under seal. The  
16 Confidential Disbursement Order will identify each plaintiff's liquidated damages, back wages  
17 portion of the damages, and the attorneys' fees to be paid to Class Counsel and shall remain  
18 confidential as it reveals personal information pertaining to sworn law enforcement officers. The  
19 gross amount to be received by each of the *Brehm* and *Lara* plaintiffs (before withholding of  
20 taxes, where legally required) for both the liquidated damages and back wages (before Class  
21 Counsel withholding of fees and costs of suit) is set forth in the Confidential Disbursement Order  
22 of this Agreement.

23 By December 23, 2002, the City shall forward to Class Counsel a warrant for plaintiffs'  
24 liquidated damages claims as set forth in the Confidential Disbursement Order, less appropriate  
25 attorney's fees and costs of suit to be determined in accordance with plaintiffs' retainer  
26 agreement with Class Counsel. This sum is to be deposited by Class Counsel in a trust account  
27 for the *Brehm* and *Lara* plaintiffs and disbursed by Class Counsel to each of the *Brehm* and *Lara*  
28 plaintiffs as set forth in the Confidential Disbursement Order.

1 Within seven (7) calendar days after all of the above have occurred, *i.e.*, by December 30,  
2 2002, the City shall pay plaintiffs the gross amount of back overtime wages owed, less legally  
3 required withholdings. Specifically, the City shall provide each individual plaintiff a warrant  
4 (and a receipt to Class Counsel) representing the gross back overtime wages amount as set forth  
5 in the Confidential Disbursement Order for each individual plaintiff, less legally required  
6 withheld taxes and less appropriate fees and costs of suits to be determined solely between each  
7 plaintiff and Class Counsel and as set forth in the Confidential Disbursement Order.

8 Each check transmitted to a plaintiff shall include the following notice:

9 "On November 7, 2002, The Petersen Law Firm transmitted a Notice to you  
10 regarding the proposed settlement of the *Brehm v. City of Los Angeles* and *Lara v.*  
11 *City of Los Angeles* lawsuits. Pursuant to such Notice, you were given until  
12 November 25, 2002 to file objections to the settlement with the Court. The Court  
13 conducted a hearing regarding the settlement on December 9, 2002 and thereafter  
14 approved the settlement as a fair, reasonable and adequate resolution of plaintiffs'  
15 claims. Pursuant to the Notice and the terms of the Settlement Agreement, you  
16 became bound by the terms of the settlement when you did not opt-out of the  
17 settlement by the December 13, 2002 deadline. A stipulated judgment was  
18 entered by the Court on December 18, 2002. The enclosed check concludes this  
19 case and all matters related thereto."

20 On January 2, 2003, a warrant shall be sent by the City to Class Counsel that is made  
21 payable to Class Counsel for partial attorneys' fees and costs in litigating the *Brehm* and *Lara*  
22 actions as set forth in the Confidential Disbursement Order. Finally, no later than January 6,  
23 2003, the City shall forward to Class Counsel a final warrant. The final warrant to be sent to  
24 Class Counsel shall be made payable to Class Counsel by the City for the remaining attorneys'  
25 fees and costs in litigating the *Brehm* and *Lara* actions as set forth in the Confidential  
26 Disbursement Order.

27 ///

28 ///

1                   **6.2    DISMISSAL OF BREHM AND LARA ACTIONS:**

2           Within fourteen (14) calendar days after payment by the City of the sums required under  
3 the Confidential Disbursement Order of this Agreement, Class Counsel shall file with the District  
4 Court all documents necessary to effectuate a dismissal, with prejudice, of the *Brehm* and *Lara*  
5 actions, except for the three plaintiffs identified in Section 6.3 of this Agreement.

6                   **6.3    STAY FOR PLAINTIFFS CURRENTLY IN MILITARY SERVICE**

7           Plaintiffs Mell Hogg, Jericho Velasquez, and James Zourek are currently in military  
8 service on active duty. The parties acknowledge that their claims are not dismissed or otherwise  
9 compromised by this Agreement pursuant to the Soldiers and Sailors Civil Relief Act, 50 U.S.C.  
10 Appx., § 521. Their claims shall be stayed until their return from military service. Upon the  
11 expiration of their active military service, the above-mentioned plaintiffs shall have the right to  
12 litigate this action, including the right to settle their claims, to serve and be served with discovery  
13 and motions, and to try their claims. The parties agree that the amount paid pursuant to this  
14 Agreement has been reduced by \$30,000 from \$6,750,000 to \$6,720,000 since those three  
15 plaintiffs are not a party to the Agreement and will not dismiss their claims at this time.

16                   **7.    AGREEMENT REGARDING PAYMENT OF OVERTIME:**

17                   **7.1    CITY'S EFFORTS**

18           The City's good faith efforts include having conducted the "white time" audit in June  
19 2000, requiring a provision regarding the prohibition of "white time" in the Memorandum of  
20 Understanding ("MOU") for the Police Officers, Lieutenant and Below Representation Unit,  
21 No. 24, 2001-2003, as reflected in Article 4.1.C of the MOU, and issuing the Notice from the  
22 LAPD Chief of Police entitled "Prohibition against Working Unauthorized Overtime to Prepare  
23 for Roll Call" on August 27, 2001. The reason the City has undertaken these remedial measures  
24 is because it believes these efforts are sufficient to establish a good faith corrective action  
25 affirmative defense as set forth in 29 U.S.C. § 260.

26                   **7.2    AGREEMENTS REGARDING UNCOMPENSATED TIME**

27           Plaintiffs agree not to work any uncompensated time and the City agrees that it will  
28 maintain a policy prohibiting supervisors from allowing Plaintiffs to work uncompensated time.

1 Both parties in these lawsuits agree that it is against the law to work uncompensated time.

2 **8. SETTLEMENT PROCEDURE:**

3 Upon preliminary approval of this Agreement by the City Council, Class Counsel shall  
4 commence notification to the *Brehm* and *Lara* plaintiffs this Agreement by November 7, 2002, in  
5 a manner reasonably calculated to give actual notice to all applicable plaintiffs of *Brehm* and  
6 *Lara*. The Notice shall contain this Settlement Agreement, a letter from Class Counsel and  
7 shall, at a minimum, advise in plain language:

- 8 a) A plaintiff must file any written objections to the Proposed Settlement  
9 with the Court no later than November 25, 2002, and serve copies of such  
10 objections upon counsel for the plaintiffs and the City;
- 11 b) The Court shall conduct a hearing to consider the objections of any  
12 plaintiff to the Proposed Settlement on December 9, 2002 at 1:30 p.m. in  
13 Courtroom 16 of the United States District Court in Los Angeles;
- 14 c) The Court shall determine whether the Proposed Settlement is fair,  
15 reasonable, and adequate after hearing any objections to the Proposed  
16 Settlement;
- 17 d) If the Court determines the Proposed Settlement is fair, reasonable, and  
18 adequate the Court shall enter a Stipulated Judgment in accordance with  
19 the terms of this Agreement;
- 20 e) The lack of a response from any particular plaintiff during the period for  
21 written objections shall be deemed as an acceptance of the terms of the  
22 Settlement Agreement;
- 23 f) The amount of liquidated damages which the plaintiff will receive  
24 pursuant to this Settlement Agreement, if the Agreement is approved by  
25 the Court;
- 26 g) The damages amount of back wages which the plaintiff will receive  
27 pursuant to this Settlement Agreement, if the Agreement is approved by  
28 the Court;

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- 1 h) The procedure for a plaintiff who chooses not to participate in the  
2 Settlement to dismiss his or her claims without prejudice; and  
3 i) Instructions regarding the method of acceptance of the Settlement  
4 Agreement.

5 Class Counsel and counsel for the City shall make best efforts to effectuate and  
6 implement the Settlement Agreement by notifying plaintiffs of *Brehm* and *Lara* of the terms of  
7 the Settlement Agreement and the events which will occur as the parties perform their  
8 obligations under the Agreement through departmental mail and/or U.S. mail.

9 **8.1 HEARING ON PROPOSED SETTLEMENT:**

10 The Court shall conduct a hearing to determine if the Proposed Settlement is fair,  
11 reasonable, and adequate on December 9, 2002, at 1:30 p.m. Any objections by any person to  
12 the Proposed Settlement must be filed with the Court and served on Class Counsel and counsel  
13 for the City no later than November 25, 2002. Class Counsel or counsel for the City may file a  
14 written response to the objections with the Court no later than December 3, 2002. If the Court  
15 determines that the Proposed Settlement is fair, reasonable, and adequate, the Court shall issue an  
16 order to that effect.

17 **8.2 DISMISSAL OF CLAIMS BY PLAINTIFFS:**

18 Any plaintiff who decides not to participate in the Settlement Agreement must file with  
19 the Court and serve on all counsel a dismissal of his or her claims without prejudice no later than  
20 December 13, 2002. The Court, if it issues an order that the Settlement is fair, reasonable, and  
21 adequate, shall enter a Stipulated Judgment in accordance with the terms of this Agreement on  
22 December 18, 2002, except as noted below. Either party shall have until December 16, 2002 to  
23 apply to the Court for permission to rescind its approval of the Agreement due to objections  
24 and/or dismissals by the plaintiffs. If such an application is made, the Court shall not enter a  
25 Stipulated Judgment until it rules on the application.

26 ///

27 ///

28 ///

1                                **8.2.1   REDUCTION OF SETTLEMENT AMOUNTS FOR**  
2                                **PLAINTIFFS WHO DISMISS THEIR CLAIMS:**

3                The total settlement amounts set forth in the Confidential Disbursement Order of this  
4 Agreement shall be reduced in accordance with the amounts set forth in the Confidential  
5 Disbursement Order for each Plaintiff who affirmatively elects not to be bound by the Settlement  
6 and dismisses their claims without prejudice according to the procedure set forth in paragraphs  
7 8(h) & 8.2. Specifically, the total amounts set forth in the Confidential Disbursement Order will  
8 be reduced by the amount set forth in the Confidential Disbursement Order for each *Brehm* or  
9 *Lara* plaintiff who dismisses his or her claims without prejudice. The Court shall enter an order  
10 returning to the City the sum of money awarded to each person who elects not to be bound by the  
11 Settlement Agreement awarded by the Confidential Disbursement Order.

12                **9.   ANTI-RETALIATION:**

13                The FLSA prohibits retaliation by the City against plaintiffs, as set forth more fully at 29  
14 U.S.C. § 215(a)(3). No retaliatory action shall be taken against any plaintiff by the City for his  
15 or her participation in the litigation and/or settlement in the *Brehm* or *Lara* actions.

16                **10.   DISCLOSURES AND REPRESENTATIONS:**

17                                **10.1   CONSULTATION WITH COUNSEL:**

18                Plaintiffs have been informed of the opinion of Class Counsel, and have had sufficient  
19 time to consult with independent counsel with respect to the advisability of accepting the terms  
20 of this Agreement, and with respect to the releases, waivers, and all matters contained herein.  
21 Plaintiffs, in accepting the settlement, agree to the terms herein and hold harmless all attorneys,  
22 agents, servants or others acting relevant thereto. The City has had sufficient time to consult  
23 with counsel with respect to the advisability of executing this Agreement, and with respect to the  
24 releases, waivers, and all matters contained herein. The City and plaintiffs acknowledge that  
25 they have executed this Agreement without fraud, duress, or undue influence.

26                                **10.2   NO RELIANCE ON PRIOR REPRESENTATIONS:**

27                Statements made in the past have been modified by changing circumstances. Plaintiffs  
28 and the City acknowledge that the circumstances in this settlement are unique. Plaintiffs, and



1 any other officer, agent, employee, representative, or attorney, have not made any statements,  
2 representations, or promises to the City regarding any facts which may be relied upon in  
3 executing this Agreement, except as expressly stated in this Agreement. Neither the City, nor  
4 any other officer, agent, employee, representative, or attorney, has made any statement,  
5 representation, or promise to the plaintiffs regarding any facts which may be relied upon in  
6 executing this Agreement, except as expressly stated in this Agreement.

7 **10.3 VOLUNTARY AND KNOWING WAIVER OF RIGHT:**

8 Each party acknowledges that he, she or it has carefully read this Agreement and has been  
9 advised fully by legal counsel of the legal and binding effect of its terms. Each party  
10 acknowledges that the only promises made to induce him, her, or it to sign this Agreement are  
11 those stated herein. Having been fully advised and informed, each party voluntarily enters into  
12 this Agreement and the waiver of rights covered by this Agreement. Each plaintiff realizes that  
13 he or she has a right under the FLSA or any other federal or state laws to minimum wages and  
14 unpaid overtime as set forth in the FLSA or any other federal or state laws. Each party agrees  
15 that he or she is entering into this Settlement Agreement because of uncertainty over the outcome  
16 of the litigation and the potential for plaintiffs to receive anywhere from no damages to full  
17 liquidated damages and attorneys' fees should these actions proceed to a final judgment and is  
18 therefore not waiving any entitlement to overtime that he or she possessed under the FLSA or  
19 any other federal or state laws.

20 Each party understands, acknowledges, and agrees that this is a compromise settlement of  
21 disputed claims, and that nothing herein shall be deemed or construed at any time or for any  
22 purpose as an admission of the merits of any claim or defense.

23 **10.4 ASSIGNMENT OF RIGHTS BY PLAINTIFFS:**

24 Except for such assignments, transfers, or grants which may have occurred upon  
25 operation of law, the parties have not heretofore assigned, transferred, or granted, or purported to  
26 assign, transfer, or grant, any of the claims, demands, causes of action, obligations, liens,  
27 judgments, orders, damages, liabilities, losses, costs and expenses of any kind, in law or in  
28 equity, whether known or unknown, that parties now hold, will ever hold, or have ever held



1 against the other related to this case, including, but not limited to: 1) any and all claims,  
2 demands, or causes of action reflected in the lawsuit; 2) any and all claims, demands, or causes  
3 of action arising out of or in any way connected with any transactions, occurrences, acts or  
4 omissions set forth or alleged in the lawsuit; or 3) any and all claims, demands, or causes of  
5 action arising out of or in any way connected with any transactions, occurrences, acts or  
6 omissions occurring prior to the entry of a Stipulated Judgment by the Court.

7 **11. REIMBURSEMENTS:**

8 The parties further agree that the amounts to be paid by the City to Class Counsel  
9 pursuant to the Confidential Disbursement Order of this Agreement constitutes full compensation  
10 of the attorneys' fees and costs to which the *Brehm* and *Lara* plaintiffs are entitled by law from  
11 the City. Any additional fees and/or costs associated with the prosecuting of the *Brehm* and *Lara*  
12 actions shall be borne solely by the *Brehm* and *Lara* plaintiffs and/or Class Counsel.

13 **12. JURISDICTION:**

14 This Agreement, upon execution by the parties and entry of a Stipulated Judgment by the  
15 Court, shall have the effect of a binding judgment. In the event of breach of this Agreement by  
16 any of the parties, the Court shall have the authority to enforce any and all of the terms and  
17 conditions contained herein for a five (5) year period commencing with the Court's approval of  
18 the terms of this Agreement. If any action is instituted to enforce this Agreement, the Court shall  
19 have jurisdiction to award attorneys' fees and costs to the prevailing party.

20 **13. ENTIRE AGREEMENT IS INTEGRATED:**

21 The parties agree that the obligations contained in this Agreement are the sole and only  
22 consideration for it, and that no representations or inducements have been made by any party, or  
23 such party's employees, agents, or attorneys, except as specifically set forth in this Agreement.  
24 There is no other Agreement, written or oral, express or implied, between the parties with respect  
25 to the subject matter of this Agreement except as explicitly referred to herein. This Agreement  
26 supersedes any previous oral or written agreements or understandings between the parties  
27 regarding any matter contained in the Agreement. This Agreement cannot be amended,  
28 ///

1 modified, or supplemented in any respect except by a written agreement executed by the parties  
2 identified in section 20 of this Agreement.

3 **14. SUCCESSORS:**

4 This Agreement shall be binding upon plaintiffs and their heirs, representatives,  
5 executors, administrators, successors and assigns, and shall inure to the benefit of each and all of  
6 the heirs, representatives, executors, administrators, successors, and assigns.

7 **15. JOINT DRAFTING OF AGREEMENT:**

8 The *Brehm* and *Lara* plaintiffs, through their Class Counsel, and the City, through its  
9 attorneys, have participated in the drafting of this Agreement. The attorneys for all parties by  
10 their signature on this Agreement approve it as to form, and accordingly, the normal rule of  
11 construction to the effect that any ambiguities are to be resolved against the drafting parties will  
12 not be employed in any interpretation of this Agreement.

13 **16. STIPULATED JUDGMENT:**

14 Upon execution by the parties in the manner set forth above and the Court's  
15 determination that the Proposed Settlement is fair, adequate, and reasonable, this Agreement  
16 shall be submitted to the Court for entry of a stipulated judgment.

17 **17. WITHHOLDING OF TAXES FROM SETTLEMENT AMOUNTS:**

18 The parties agree and the Court so determines that the lump sum cash payments set forth  
19 in Confidential Disbursement Order (Attachment A) to the Agreement that are designated as  
20 back wages are wages subject to full withholding of federal and state income and other payroll  
21 withholding taxes.

22 The parties agree and the Court so determines that the cash payments set forth in the  
23 Confidential Disbursement Order (Attachment A) to this Agreement that are designated as  
24 liquidated damages and/or attorneys' fees and costs, are not wages. Since these amounts are not  
25 wages, the parties believe that such amounts are not subject to federal and state income or other  
26 payroll tax withholding requirements, although they may be taxable as gross income.

27 Plaintiffs are encouraged to consult with a tax advisor or attorney to determine  
28 independently any federal, state, or local tax consequences of the settlement amounts, and no

1 opinion on any tax matter is expressed herein. Plaintiffs are solely responsible for reporting  
2 amounts received as liquidated damages pursuant to this Agreement to any applicable federal,  
3 state or local agency as required by law.

4     The withholding of taxes with respect to the disbursement of funds classified as wages  
5 under the Confidential Disbursement Order will be made in accordance with the W-4 form each  
6 plaintiff has on file with the City. No taxes will be withheld from the disbursement of funds  
7 classified as liquidated damages under the Confidential Disbursement Order. The parties agree  
8 that the City may report funds paid as liquidated damages on IRS Form 1099 as compensation  
9 paid to each plaintiff and shall not withhold from or remit payment to the Internal Revenue  
10 Service on account of such payment. Plaintiffs will be responsible for any and all taxes  
11 associated with this lump-sum payment for liquidated damages as designated in the Confidential  
12 Disbursement Order.

13     **18.     FORCE MAJEURE:**

14     If any act of God, riot, natural disaster, war, armed conflict, or other event of a similar  
15 nature occurs which substantially impairs the ability of a party to perform the terms of this  
16 Agreement, then either party may terminate the Agreement upon application and approval by the  
17 Court.

18     **19.     SEVERABILITY:**

19     This Agreement shall be considered severable, such that if any provision or part of the  
20 Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement  
21 shall remain in force and effect to the extent allowed by law, and all other provisions or parts  
22 shall remain in full force and effect.

23 ///

24 ///

25 ///

26 ///

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1       **20.    EXECUTION OF THIS AGREEMENT:**

2               **20.1   EXECUTION BY THE CITY:**

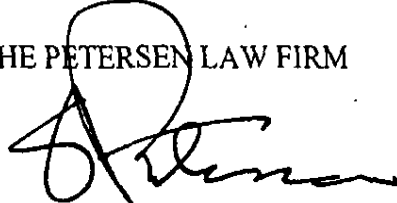
3               The Charter for the City provides that only the City Council has authority to enter into  
4 this Agreement. Therefore, this Agreement may only be approved by the City by an action of the  
5 City Council.

6               **20.2   EXECUTION BY THE PLAINTIFFS:**

7               This Agreement will be executed on behalf of plaintiffs by Class Counsel.


8  
9                               THE PETERSEN LAW FIRM

10  
11 DATED: 12/19, 2002

  
GREGORY G. PETERSEN, ESQ., Class Counsel  
in *Brehm v. City of Los Angeles* and *Lara v. City of Los Angeles*

12  
13  
14                               CITY OF LOS ANGELES


15  
16 DATED: 1/9, 200<sup>3</sup><sub>7</sub>

17 By:   
GARY G. GELUSS  
Assistant City Attorney

18       **APPROVED AS TO FORM:**

19  
20                               LIEBERT CASSIDY WHITMORE

21  
22 DATED: 12/26, 2002

23 By:   
PETER J. BROWN  
Attorneys for Defendant, City of Los Angeles

34 Ex. A 31-31

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**SETTLEMENT AGREEMENT AND RELEASE****RECITALS**

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Beginning in 2000, a number of present and former police officers in the Los Angeles Police Department ("LAPD") individually retained The Petersen Law Firm to bring a lawsuit against their employer, the City of Los Angeles ("City"), a municipal corporation. Plaintiffs sought relief for an alleged violation of the federal Fair Labor Standards Act (hereinafter "FLSA"), 29 U.S.C. § 201 et seq., in regard to the payment of overtime, in an action entitled *Edward Brehm v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. CV-02-4979-JFW (JWJx) (formerly SACV 00-748-GLT (MLGx)) ("the Brehm litigation" or "the Brehm action").

In 2002, present and/or former police officers in the LAPD individually retained The Petersen Law Firm to file an action against the City, entitled *Stella Lara v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. 02-2185-GHK (RCx) ("the Lara litigation" or "the Lara action"), alleging that the City violated the provisions of the FLSA in regard to the payment of overtime.

The parties agreed on a settlement on or about January 9, 2003 on behalf of all Brehm and Lara plaintiffs, with the exception of plaintiffs Mell Hogg ("Hogg"), Jericho Velasquez ("Velasquez") and James Zourek ("Zourek"). Hogg, Velasquez and Zourek were not parties to the January 9, 2003 Settlement Agreement because they each were serving abroad in the United States military, and their claims could not be settled pursuant to the Soldiers and Sailors Civil Relief Act, 50 U.S.C. Appx., § 521. Hogg, Velasquez and Zourek have now returned from military leave, and the parties hereby enter into the following Settlement Agreement to resolve their claims in the manner set forth below:

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## 1. PARTIES

This Settlement Agreement ("Agreement") is made by and between Velasquez, a named plaintiff in the Brehm action and/or the Lara action, and the City, a municipal corporation.

## 2. DISPOSITION OF CLAIMS

The parties, with the exception of Hogg, Velasquez and Zourek, due to their military leave, previously agreed to a comprehensive release in, and global settlement of, the Brehm and Lara actions. A true and correct copy of the January 9, 2003 Settlement Agreement is attached hereto as Exhibit "1," and the terms of said Settlement Agreement are incorporated herein by reference. The January 9, 2003 Settlement Agreement will hereinafter be referred to as "Exhibit 1" in this Agreement.

The purpose of this Agreement is to resolve and settle all outstanding claims, issues, and disputes in the Brehm and/or Lara actions brought by Velasquez against the City for the City's alleged failure to compensate Velasquez under the FLSA and any other applicable federal and state laws. In consideration of the City's payment of \$48,428.66 (\$24,206.26 for back pay, \$8,084.89 for liquidated damages and \$16,137.51 for attorneys' fees) to Castle, Petersen & Krause, LLP on behalf of Velasquez, Velasquez agrees to settle and release all the claims described more fully in Exhibit 1 to this Agreement. Velasquez specifically agrees to waive any and all wage claims under federal and state law existing at the time Exhibit 1 was executed, including but not limited to, FLSA wage and hour claims and known FLSA retaliation claims, but excluding any workers' compensation claims. As set forth in Exhibit 1, nothing in this settlement will alter the terms and conditions of the prior agreements in the actions styled *Michael L. Kimpel v. Willie Williams* action, C.D. Cal. No. CV 93-3441-GHK(RNBx) and *Michael C. Huff v. Bernard Parks*, C.D. Cal. No. CV 98-10245-GHK(RNBx).

### 3. WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542

The parties understand that this Agreement extends to all grievances, disputes, or claims of every nature and kind, known or unknown, suspected or unsuspected, which are related to the claims of Velasquez in the Brehm and Lara actions for unpaid wages, as described in the Recitals of Exhibit 1, including, but not limited to, any and all wage claims under the FLSA and under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims. The parties understand that this release does not address claims relating to any conduct or activity which occurs after the date of the execution of Exhibit 1, *i.e.*, January 9, 2003. The parties further acknowledge that any and all rights granted them under section 1542 of the California Civil Code, which are related to the claims of Velasquez for unpaid wages, are hereby expressly waived. This section 1542 waiver does not include retaliation claims. Section 1542 of the California Civil Code reads as follows:

SECTION 1542. CERTAIN CLAIMS AFFECTED BY  
GENERAL RELEASE.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
HER SETTLEMENT WITH THE DEBTOR.

### 4. RELEASE

Plaintiff Velasquez and all of his respective attorneys, agents, and assignees, do hereby fully and forever release and discharge each other, the City and its past or present governing

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bodies, boards, officers, directors, attorneys, and agents, from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands which are related to his claims in the Brehm and Lara actions regarding the City's alleged violations of any and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage and hour claims under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims, if any, as described more fully in the Recitals of Exhibit 1.

The City hereby fully and forever releases and discharges Velasquez and all of his respective attorneys, agents, and assignees from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands arising from plaintiffs' claims in the Brehm and Lara actions regarding the City's alleged violations of any and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage and hour claims under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims, if any, as described in the Recitals of Exhibit 1.

**5. PAYMENT OF SETTLEMENT AMOUNTS AND DISMISSAL OF  
BREHM AND LARA ACTIONS**

Within thirty (30) days after the execution of this Agreement by the parties and approval as to form and content by their counsel, the City shall deliver checks and/or warrants to Velasquez' attorneys of record, Castle, Petersen & Krause, LLP, in the following amounts:

- a. The sum of \$24,206.26 for back pay (minus applicable withholdings as specified in section 12 of this Agreement) and \$8,084.89 for liquidated damages, made payable by separate checks and/or warrants to "Jericho Velasquez."

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b. The sum of \$16,137.51 to Velasquez' attorneys of record, made payable by check and/or warrant to "Castle, Petersen & Krause, LLP."

Within fourteen (14) calendar days after the City delivers checks and/or warrants to Velasquez' counsel of record in the amounts specified herein, Velasquez' counsel of record shall file with the District Court all documents necessary to effectuate a stipulated judgment concerning Velasquez' claims in the Brehm and Lara actions.

## **6. DISCLOSURES AND REPRESENTATIONS**

### **a. CONSULTATION WITH COUNSEL**

Plaintiff Velasquez has been informed of the opinion of his counsel, Gregory G. Petersen of Castle, Petersen & Krause, LLP, with respect to the advisability of accepting the terms of this Agreement, and with respect to the releases, waivers, and all matters contained herein.

Velasquez, in accepting the settlement, agrees to the terms herein and holds harmless all attorneys, agents, servants or others acting relevant thereto. The City has had sufficient time to consult with counsel with respect to the advisability of executing this Agreement, and with respect to the releases, waivers, and all matters contained herein. The City and Velasquez acknowledge that they have executed this Agreement without fraud, duress, or undue influence.

### **b. NO RELIANCE ON PRIOR REPRESENTATIONS**

Statements made in the past have been modified by changing circumstances. Plaintiff Velasquez and the City acknowledge that the circumstances in this settlement are unique. Velasquez and any other officer, agent, employee, representative, or attorney, have not made any statements, representations, or promises to the City regarding any facts which may be relied upon in executing this Agreement, except as expressly stated in this Agreement. Neither the City, nor any other officer, agent, employee, representative, nor attorney, has made any statement,

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representation, or promise to Velasquez regarding any facts which may be relied upon in executing this Agreement, except as expressly stated in this Agreement.

**c. VOLUNTARY AND KNOWING WAIVER OF RIGHT**

Each party acknowledges that he or it has carefully read this Agreement and has been advised fully by legal counsel of the legal and binding effect of its terms. Each party acknowledges that the only promises made to induce him or it to sign this Agreement are those stated herein. Having been fully advised and informed, each party voluntarily enters into this Agreement and the waiver of rights covered by this Agreement. Velasquez realizes that he has a right under the FLSA or any other federal or state laws to minimum wages and unpaid overtime as set forth in the FLSA or any other federal or state laws. Each party agrees that he or it is entering into this Settlement Agreement because of uncertainty over the outcome of the litigation and the potential for Velasquez to receive anywhere from no damages to full liquidated damages and attorneys' fees should the Brehm and/or Lara actions proceed to a final judgment and is therefore not waiving any entitlement to overtime that he/it possessed under the FLSA or any other federal or state laws.

Each party understands, acknowledges, and agrees that this is a compromise settlement of disputed claims, and that nothing herein shall be deemed or construed at any time or for any purpose as an admission of the merits of any claim or defense.

**d. ASSIGNMENT OF RIGHTS BY PLAINTIFF**

Except for such assignments, transfers, or grants which may have occurred upon operation of law, the parties have not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, causes of action, obligations, liens, judgments, orders, damages, liabilities, losses, costs and expenses of any kind, in law or in

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equity, whether known or unknown, that parties now hold, will ever hold, or have ever held against the other related to this case, including, but not limited to: 1) any and all claims, demands, or causes of action reflected in the lawsuit; 2) any and all claims, demands, or causes of action arising out of or in any way connected with any transactions, occurrences, acts or omissions set forth or alleged in the lawsuit; or 3) any and all claims, demands, or causes of action arising out of or in any way connected with any transactions, occurrences, acts or omissions occurring prior to the execution of Exhibit 1.

#### **7. REIMBURSEMENTS AND ATTORNEYS' FEES**

The parties further agree that the amounts to be paid by the City to Velasquez' counsel of record, Castle, Petersen & Krause, LLP, constitute full compensation of the attorneys' fees and costs to which plaintiffs are entitled by law from the City. Any additional fees and/or costs associated with the prosecution of the Brehm and Lara actions shall be borne solely by the Brehm and Lara plaintiffs and/or their counsel. However, if any action at law or in equity, including any action for declaratory relief, is brought to enforce any or all of the provisions of this Agreement, the prevailing party will be entitled to and shall be awarded reasonable attorneys' fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

#### **8. ENTIRE AGREEMENT IS INTEGRATED**

The parties agree that the obligations contained in this Agreement are the sole and only consideration for it, and that no representations or inducements have been made by any party, or such party's employees, agents, or attorneys, except as specifically set forth in this Agreement. There is no other Agreement, written or oral, express or implied, between the parties with respect to the subject matter of this Agreement except as explicitly referred to herein. This Agreement

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supersedes any previous oral or written agreements or understandings between the parties regarding any matter contained in the Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a written agreement executed by all the parties to this Agreement.

#### **9. SUCCESSORS**

This Agreement shall be binding upon Velasquez and his heirs, representatives, executors, administrators, successors and assigns, and shall inure to the benefit of each and all of the heirs, representatives, executors, administrators, successors, and assigns.

#### **10. JOINT DRAFTING OF AGREEMENT**

Velasquez, through his attorneys, and the City, through its attorneys, have participated in the drafting of this Agreement. The attorneys for all parties by their signature on this Agreement approve it as to form, and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting parties will not be employed in any interpretation of this Agreement.

#### **11. STIPULATED JUDGMENT**

Upon execution by the parties and the Court's determination that the proposed settlement amount is fair, adequate, and reasonable, counsel for Velasquez shall prepare the necessary documents and submit this Agreement to the Court for entry of a stipulated judgment.

#### **12. WITHHOLDING OF TAXES FROM SETTLEMENT AMOUNTS**

The parties agree that the payments described in section 5 of this Agreement are subject to the tax treatment described below. The amount specified in subparagraph "a" shall be subject to legally required deductions and withholdings. The amounts specified in subparagraphs "b" and "c" shall be paid without withholdings.

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a. **Lost Income/Back Pay:** As to the payment of \$24,206.26 to Velasquez in settlement of all claims, the parties agree that this amount shall be subject to income tax and other legally required withholding, and will be reported by the City as income to Velasquez on an IRS Form W-2.

b. **Liquidated Damages:** As to the payment of \$8,084.89 to Velasquez in settlement of all claims, the parties agree that this amount represents liquidated damages and that this amount shall not be subject to income tax or other withholdings. The City will issue an IRS Form 1099 to Velasquez in the amount of \$8,084.89.

c. **Attorneys' Fees:** As to the payment of \$16,137.51 paid to Velasquez' counsel of record, Castle, Petersen & Krause, LLP, for attorneys' fees incurred on Velasquez' behalf, the City will issue an IRS Form 1099 to Castle, Petersen & Krause, LLP in the amount of \$16,137.51.

The attorneys for the City and for Velasquez make no warranty, representation or characterization regarding the tax obligations or consequences related to this Agreement. Velasquez and/or his counsel of record are solely responsible for any and all taxes associated with the payments made to Velasquez and his counsel of record under this Agreement.

### 13. SEVERABILITY

This Agreement shall be considered severable, such that if any provision or part of the Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement shall remain in force and effect to the extent allowed by law, and all other provisions or parts shall remain in full force and effect.

JERICO VELASQUEZ

DATED: December 23, 2005

By 

SCANNED

Jericho Velasquez, Plaintiff

CITY OF LOS ANGELES

DATED: December \_\_, 2005

By: \_\_\_\_\_

Gary Geuss, Esq.  
Chief Assistant City Attorney

APPROVED AS TO FORM:

CASTLE, PETERSEN &amp; KRAUSE LLP

DATED: December \_\_, 2005

By:  \_\_\_\_\_Gregory G. Petersen, Esq.  
Attorneys for Plaintiff  
JERICHO VELASQUEZ

LIEBERT CASSIDY WHITMORE

DATED: December \_\_, 2005

By: \_\_\_\_\_

Brian P. Walter, Esq.  
Attorneys for Defendant  
CITY OF LOS ANGELES

SCANNED

Velasquez and/or his counsel of record are solely responsible for any and all taxes associated with the payments made to Velasquez and his counsel of record under this Agreement.

### 13. SEVERABILITY

This Agreement shall be considered severable, such that if any provision or part of the Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement shall remain in force and effect to the extent allowed by law, and all other provisions or parts shall remain in full force and effect.

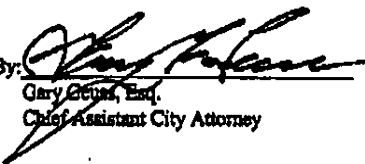
JERICHO VELASQUEZ

DATED: December \_\_, 2005

By: \_\_\_\_\_  
Jericho Velasquez, Plaintiff

CITY OF LOS ANGELES

DATED: December 27, 2005

By:   
Gary Gauss, Esq.  
Chief Assistant City Attorney

APPROVED AS TO FORM:

CASTLE, PETERSEN & KRAUSE LLP

DATED: December \_\_, 2005

By: \_\_\_\_\_  
Gregory G. Petersen, Esq.  
Attorneys for Plaintiff  
JERICHO VELASQUEZ

LIBERT CASSIDY WHITMORE

DATED: December \_\_, 2005

By: \_\_\_\_\_

45 Ex. B 11-30



SCANNED

Jericho Velasquez, Plaintiff

CITY OF LOS ANGELES

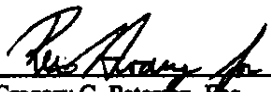
DATED: December \_\_, 2005

By: \_\_\_\_\_  
Gary Geuss, Esq.  
Chief Assistant City Attorney

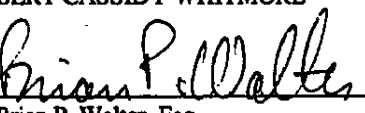
APPROVED AS TO FORM:

CASTLE, PETERSEN &amp; KRAUSE LLP

DATED: December \_\_, 2005

By:   
Gregory G. Petersen, Esq.  
Attorneys for Plaintiff  
JERICO VELASQUEZDATED: January 5  
~~December~~ \_\_, 2006

LIEBERT CASSIDY WHITMORE

By:   
Brian P. Walter, Esq.  
Attorneys for Defendant  
CITY OF LOS ANGELES

## 1 SETTLEMENT AGREEMENT AND RELEASE

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2  
3 RECITALS

4 Beginning in 2000, a number of present and former police officers in the Los Angeles  
5 Police Department ("LAPD") individually retained The Petersen Law Firm to bring a lawsuit  
6 against their employer, the City of Los Angeles ("City"), a municipal corporation. Plaintiffs  
7 sought relief for an alleged violation of the federal Fair Labor Standards Act (hereinafter  
8 "FLSA"), 29 U.S.C. § 201 *et seq.*, in regard to the payment of overtime, in an action entitled  
9 *Edward Brehm v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. CV-02-4979-JFW  
10 (JWJx) (formerly SACV 00-748-GLT (MLGx)) ("the *Brehm* litigation" or "the *Brehm* action");

11 One provision of the FLSA, 29 U.S.C. § 216(b), allows employees to join a  
12 representative collective action under the FLSA by filing consents to join with the District Court,  
13 and approximately 573 present or former LAPD officers joined the *Brehm* litigation prior to the  
14 District Court-imposed deadline of April 1, 2001. Since the filing of the lawsuit, about 80  
15 plaintiffs have been dismissed from the litigation, leaving four hundred ninety-three (493)  
16 plaintiffs to participate in the terms of this Settlement Agreement and Release;

17 In 2002, present and/or former police officers in the LAPD individually retained The  
18 Petersen Law Firm to file an action against the City, entitled *Stella Lara v. City of Los Angeles*,  
19 U.S. District Court, C.D. Cal. No. 02-2185-GHK (RCx) ("the *Lara* litigation" or "the *Lara*  
20 action"), alleging that the City violated the provisions of the FLSA in regard to the payment of  
21 overtime;

22 About 17 present and/or former police officers have joined the *Lara* litigation as of the  
23 stipulated opt-in cut-off deadline of August 28, 2002. The allegations in the *Brehm* and *Lara*  
24 actions are essentially the same, although not every claim is alleged by every plaintiff;

25 The *Brehm* and *Lara* plaintiffs claim that the City violated the FLSA, and other  
26 applicable federal and state wage laws, by requiring the plaintiffs to work overtime hours without  
27 compensation. Plaintiffs allege they were told or pressured by their supervising officers not to  
28 submit an overtime slip, but rather to adjust or flex their schedules, known as "white time."

1 Plaintiffs allege they could not adjust off all of the hours of uncompensated overtime they had  
2 accumulated within the same deployment period in which the hours were worked, and in some  
3 circumstances were never able to use those "white time" hours. On some of the occasions that  
4 plaintiffs did in fact adjust their schedules, plaintiffs allege that the hours were taken off at the  
5 rate of only one hour off for each hour (hour for hour or "straight time") of overtime worked,  
6 instead of at the time and a half premium rate.

7 Plaintiffs asserted three additional specific claims as to the City's alleged violations of 29  
8 U.S.C. § 207(k) and 29 U.S.C. § 207(o), in regards to the City's denials of the plaintiffs' requests  
9 to be paid overtime compensation and the widespread implementation of an alleged unofficial  
10 compensatory time off system. The first claim asserts that the City required plaintiffs to start  
11 working before their regularly scheduled start of watch in order to prepare for roll call without  
12 compensation. The second claim asserts that the City required plaintiffs to work through their  
13 scheduled meal period without compensation. The third claim asserts that the City required  
14 plaintiffs to work past their regularly scheduled end of watch without compensation. The City  
15 denies these claims. Plaintiffs allege the City willfully violated 29 U.S.C. § 206, the minimum  
16 wage provision of the FLSA, by failing to pay for all overtime hours worked, and the City failed  
17 to keep or maintain any records of each of the plaintiffs' actual number of hours worked, in  
18 violation of 29 U.S.C. § 211(c). The parties dispute whether any hours were being worked  
19 without compensation.

20 The parties have already expended millions of dollars in costs and attorney's fees during  
21 the litigation of the *Brehm* and *Lara* actions. Had the *Brehm* and *Lara* actions not settled, the  
22 parties expected years of continued litigation at a cost of millions of additional dollars in  
23 attorneys' fees. The settlement was reached after extensive negotiations;

24 Had these actions not settled as set forth hereinafter, the parties were anticipating a trial in  
25 June 2003 on the claims of each plaintiff that they were unlawfully denied the payment of  
26 overtime compensation, which could have entailed hundreds of depositions and trials of each  
27 claim, including individual discovery and trial of each claim by each plaintiff that

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1 uncompensated hours were worked. The parties anticipated that this aspect of the litigation alone  
2 would have consumed years of litigation at immense cost to both sides;

3       Additionally, the parties anticipated litigating whether plaintiffs were entitled to  
4 compensation for "gap time," whether the City could offset certain payments to plaintiffs against  
5 any FLSA or state law overtime liability, whether an average of plaintiffs' estimated range of  
6 hours worked could be used to determine damages, and whether the City acted in good faith or  
7 willfully violated the FLSA or any other applicable federal or state laws. The parties also took  
8 into account the unpredictability of recovery, which for the failure to pay overtime for time  
9 worked could have been as great as full liquidated damages or as little as nothing, depending on  
10 whether the City was able to establish that it acted in good faith pursuant to 29 U.S.C. § 260.  
11 The parties fully expected that whatever the outcome in the District Court, there was a high  
12 probability of appeal by both sides on numerous issues. After numerous hours of negotiations  
13 and evaluation of the merits and potential damages, the parties view this settlement as a  
14 compromise of the risks attendant to both sides in continuing the litigation. The City admits no  
15 liability but settles the matter solely due to the costs of litigating these actions;

16       The parties hereby enter into the following Settlement Agreement:

17       **1. PARTIES:**

18       This Settlement Agreement ("Agreement") is made by and between the named plaintiffs  
19 in *Edward Brehm v. City of Los Angeles*, C.D. Cal. No. CV-02-4979-JFW (JWJx) (formerly  
20 SACV 00-748-GLT (MLGx)), and all persons who have filed a consent to join the *Brehm* action  
21 (hereinafter "*Brehm* plaintiffs"), and Stella Lara and all persons who have filed a consent to join  
22 the *Stella Lara v. City of Los Angeles*, No. 02-2185-GHK (RCx) action (hereinafter "*Lara*  
23 plaintiffs"), collectively referred to as "plaintiffs", and the City of Los Angeles (hereinafter  
24 "City"), a municipal corporation. Although the *Brehm* and *Lara* actions have not yet been  
25 consolidated by the Court, the parties agree that the cases are related and should be deemed  
26 consolidated.

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1           **2.     DEFINITIONS:**

2                   **2.1     LAPD:**

3           As used in this Agreement, "LAPD" refers to the Los Angeles Police Department.

4                   **2.2     SWORN EMPLOYEE:**

5           As used in this Agreement, "sworn employee" refers to a sworn employee of the LAPD  
6 holding the rank of lieutenant or below.

7                   **2.3     FLSA:**

8           As used in this Agreement, "FLSA" refers to the Fair Labor Standards Act of 1938, 29  
9 U.S.C. §§ 201-219 and the Portal to Portal Act of 1947, 29 U.S.C. §§ 251-262.

10                   **2.4     DEPLOYMENT PERIOD**

11           As used in this Agreement, "Deployment Period" ("DP") refers to a sworn employee's  
12 twenty-eight (28) day work period.

13                   **2.5     OVERTIME:**

14           As used in this Agreement, unless otherwise indicated, "overtime" refers to both FLSA  
15 overtime and non-FLSA overtime.

16                   **2.6     FLSA OVERTIME:**

17           As used in this Agreement, "FLSA overtime" refers to hours actually worked by a sworn  
18 employee of the LAPD during a twenty-eight (28) day work period (deployment period) which  
19 exceed one hundred seventy-one (171) hours.

20                   **2.7     NON-FLSA OVERTIME:**

21           As used in this Agreement, "non-FLSA overtime" refers to the compensation of a sworn  
22 employee with overtime pursuant to the Memorandum of Understanding for the Police Officers,  
23 Lieutenant and Below Representation Unit with the City for any hours worked or activities  
24 which are not FLSA overtime hours.

25                   **2.8     WHITE TIME:**

26           As used in this Agreement, "white time" refers to unofficial compensatory time off given  
27 to plaintiffs for working overtime hours.

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Ex. B 16-30

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**2.9 EXTENDED END OF WATCH:**

As used in this Agreement, "extended end of watch" time refers to time worked past a sworn employee's regularly scheduled watch (duty day).

**2.10 ROLL CALL PREPARATION:**

As used in this Agreement, "roll call preparation" refers to time worked before or prior to a sworn employee's start of watch (duty day) to prepare for roll call.

**2.11 CODE 7**

As used in this Agreement, "Code 7" refers to a sworn employee's meal period during their scheduled watch hours, which may be either a 30 minute or a 45 minute break, depending on rank and assignment.

**2.12 CLASS COUNSEL:**

As used in this Agreement, "Class Counsel" refers to Gregory G. Petersen, Esq., the attorney representing the *Brehm* and *Lara* plaintiffs.

**3. CLASS STATUS:****3.1 STIPULATION OF FACT:**

The *Brehm* and *Lara* actions are representative collective/class actions under section 216(b) of the FLSA. Each plaintiff in *Brehm* or *Lara* who was not named in the complaints filed a consent to join the actions. Each of the plaintiffs herein have common questions of law and fact which predominate.

**3.2 CLASS COUNSEL:**

Gregory G. Petersen, Esq., has been designated to be Class Counsel for plaintiffs in the *Brehm* and *Lara* actions.

**4. PURPOSE OF AGREEMENT:**

The purpose of this Agreement is to resolve and settle all outstanding claims, issues, and disputes in the *Brehm* and *Lara* actions brought by plaintiffs against the City for the City's alleged failure to compensate plaintiffs for all hours worked under the FLSA and any other applicable federal and state laws. The parties agree to a comprehensive release in, and global settlement of, the *Brehm v. City of Los Angeles* and *Lara v. City of Los Angeles* actions. The

1 plaintiffs in these actions agree to settle any and all wage claims under federal and state law,  
2 including, but not limited to, FLSA wage and hour claims and known FLSA retaliation claims,  
3 but excluding any workers' compensation claims. However, nothing in this settlement will alter  
4 the terms and conditions of the prior agreements in the *Michael L. Kimpel v. Willie Williams*  
5 action, C.D. Cal. No. CV 93-3441-GHK(RNBx), and in the *Michael C. Huff v. Bernard Parks*,  
6 C.D. Cal. No. CV 98-10245-GHK(RNBx).

7 The claims of plaintiffs which are being compromised are set forth above in the Recitals  
8 of this Agreement. The parties dispute each of the issues as set forth above in the Recitals, and  
9 the City denies the plaintiffs' allegations as set forth above in the Recitals. The parties wish to  
10 finally settle and resolve all disputes and controversies regarding claims under the FLSA, and  
11 other applicable federal and state wage laws, but excluding any workers' compensation claims, in  
12 order to make their peace and to avoid the uncertainties of further litigation and the expense  
13 incident thereto.

14 **5. WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542:**

15 The parties understand that this Agreement extends to all grievances, disputes, or claims  
16 of every nature and kind, known or unknown, suspected or unsuspected, which are related to  
17 Plaintiffs' claims in the *Brehm* and *Lara* actions for unpaid wages, as described in the Recitals of  
18 this Agreement, including, but not limited to, any and all wage claims under the FLSA and under  
19 state law, including known retaliation claims under the FLSA related to the *Brehm* and *Lara*  
20 actions, but excluding workers' compensation claims. The parties understand that this release  
21 does not address claims relating to any conduct or activity which occurs after the date of the  
22 Court's entry of judgment which, pursuant to paragraph 8.2, the parties expect will occur on  
23 December 16, 2002. The parties further acknowledge that any and all rights granted them under  
24 section 1542 of the California *Civil Code*, which are related to Plaintiffs' claims for unpaid  
25 wages, are hereby expressly waived. This section 1542 waiver does not include retaliation  
26 claims. Section 1542 of the California *Civil Code* reads as follows:

27 **SECTION 1542. CERTAIN CLAIMS AFFECTED BY GENERAL**  
28 **RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**

SCANNED

1 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST  
2 IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
3 WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED  
4 HIS SETTLEMENT WITH THE DEBTOR.

5 **5.1 RELEASE:**

6 Plaintiffs, and all of their respective attorneys, agents, and assignees, do hereby fully and  
7 forever release and discharge each other, the City and its past or present governing bodies,  
8 boards, officers, directors, attorneys, and agents, from any and all causes of action, actions,  
9 judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands  
10 which are related to plaintiffs' claims in the *Brehm* and *Lara* actions regarding the City's alleged  
11 violations of any and all wage laws, including but not limited to FLSA wage and hour claims,  
12 and applicable wage and hour claims under state law, including known retaliation claims under  
13 the FLSA related to the *Brehm* and *Lara* actions, but excluding workers' compensation laws, as  
14 described in the Recitals of this Agreement.

15 The City hereby fully and forever releases and discharges plaintiffs and all of their  
16 respective attorneys, agents, and assignees from any and all causes of action, actions, judgments,  
17 liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands arising from  
18 plaintiffs' claims in the *Brehm* and *Lara* actions regarding the City's alleged violations of any  
19 and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage  
20 and hour claims under state law, including known retaliation claims under the FLSA related to  
21 the *Brehm* and *Lara* actions, but excluding workers' compensation laws, as described in the  
22 Recitals of this Agreement.

23 **6. PAYMENT AND PAYMENT SCHEDULES**

24 **6.1 BREHM AND LARA PLAINTIFFS**

25 The total sum to be paid by the City pursuant to this Agreement is six million seven  
26 hundred twenty thousand dollars (\$6,720,000) payable as set forth in the Confidential  
27 Disbursement Order ("Attachment A") of the Agreement.

28 ///



1 Each of the following must occur prior to the City paying any funds pursuant to this  
2 Agreement:

- 3 a) Notice of this settlement is provided to all *Brehm* and *Lara*  
4 plaintiffs by November 7, 2002;  
5 b) Plaintiffs are provided an opportunity to object to the proposed  
6 settlement by November 25, 2002;  
7 c) A hearing is held on December 9, 2002 at 1:30 p.m. regarding any  
8 of the plaintiffs' objections to the proposed settlement, if any;  
9 d) The Court approves of the terms of this Agreement on  
10 December 10, 2002;  
11 e) Plaintiffs are permitted to opt-out of this settlement by dismissing  
12 their claims without prejudice by December 13, 2002; and  
13 f) The Court enters a stipulated judgment on December 18, 2002.

14 The six million seven hundred twenty thousand dollars (\$6,720,000) shall be divided in  
15 accordance with the Confidential Disbursement Order filed with the Court under seal. The  
16 Confidential Disbursement Order will identify each plaintiff's liquidated damages, back wages  
17 portion of the damages, and the attorneys' fees to be paid to Class Counsel and shall remain  
18 confidential as it reveals personal information pertaining to sworn law enforcement officers. The  
19 gross amount to be received by each of the *Brehm* and *Lara* plaintiffs (before withholding of  
20 taxes, where legally required) for both the liquidated damages and back wages (before Class  
21 Counsel withholding of fees and costs of suit) is set forth in the Confidential Disbursement Order  
22 of this Agreement.

23 By December 23, 2002, the City shall forward to Class Counsel a warrant for plaintiffs'  
24 liquidated damages claims as set forth in the Confidential Disbursement Order, less appropriate  
25 attorney's fees and costs of suit to be determined in accordance with plaintiffs' retainer  
26 agreement with Class Counsel. This sum is to be deposited by Class Counsel in a trust account  
27 for the *Brehm* and *Lara* plaintiffs and disbursed by Class Counsel to each of the *Brehm* and *Lara*  
28 plaintiffs as set forth in the Confidential Disbursement Order.

1 Within seven (7) calendar days after all of the above have occurred, *i.e.*, by December 30,  
2 2002, the City shall pay plaintiffs the gross amount of back overtime wages owed, less legally  
3 required withholdings. Specifically, the City shall provide each individual plaintiff a warrant  
4 (and a receipt to Class Counsel) representing the gross back overtime wages amount as set forth  
5 in the Confidential Disbursement Order for each individual plaintiff, less legally required  
6 withheld taxes and less appropriate fees and costs of suits to be determined solely between each  
7 plaintiff and Class Counsel and as set forth in the Confidential Disbursement Order.

8 Each check transmitted to a plaintiff shall include the following notice:

9 "On November 7, 2002, The Petersen Law Firm transmitted a Notice to you  
10 regarding the proposed settlement of the *Brehm v. City of Los Angeles* and *Lara v.*  
11 *City of Los Angeles* lawsuits. Pursuant to such Notice, you were given until  
12 November 25, 2002 to file objections to the settlement with the Court. The Court  
13 conducted a hearing regarding the settlement on December 9, 2002 and thereafter  
14 approved the settlement as a fair, reasonable and adequate resolution of plaintiffs'  
15 claims. Pursuant to the Notice and the terms of the Settlement Agreement, you  
16 became bound by the terms of the settlement when you did not opt-out of the  
17 settlement by the December 13, 2002 deadline. A stipulated judgment was  
18 entered by the Court on December 18, 2002. The enclosed check concludes this  
19 case and all matters related thereto."

20 On January 2, 2003, a warrant shall be sent by the City to Class Counsel that is made  
21 payable to Class Counsel for partial attorneys' fees and costs in litigating the *Brehm* and *Lara*  
22 actions as set forth in the Confidential Disbursement Order. Finally, no later than January 6,  
23 2003, the City shall forward to Class Counsel a final warrant. The final warrant to be sent to  
24 Class Counsel shall be made payable to Class Counsel by the City for the remaining attorneys'  
25 fees and costs in litigating the *Brehm* and *Lara* actions as set forth in the Confidential  
26 Disbursement Order.

27 ///

28 ///

1                   **6.2    DISMISSAL OF BREHM AND LARA ACTIONS:**

2           Within fourteen (14) calendar days after payment by the City of the sums required under  
3 the Confidential Disbursement Order of this Agreement, Class Counsel shall file with the District  
4 Court all documents necessary to effectuate a dismissal, with prejudice, of the *Brehm* and *Lara*  
5 actions, except for the three plaintiffs identified in Section 6.3 of this Agreement.

6                   **6.3    STAY FOR PLAINTIFFS CURRENTLY IN MILITARY SERVICE**

7           Plaintiffs Mell Hogg, Jericho Velasquez, and James Zourek are currently in military  
8 service on active duty. The parties acknowledge that their claims are not dismissed or otherwise  
9 compromised by this Agreement pursuant to the Soldiers and Sailors Civil Relief Act, 50 U.S.C.  
10 Appx., § 521. Their claims shall be stayed until their return from military service. Upon the  
11 expiration of their active military service, the above-mentioned plaintiffs shall have the right to  
12 litigate this action, including the right to settle their claims, to serve and be served with discovery  
13 and motions, and to try their claims. The parties agree that the amount paid pursuant to this  
14 Agreement has been reduced by \$30,000 from \$6,750,000 to \$6,720,000 since those three  
15 plaintiffs are not a party to the Agreement and will not dismiss their claims at this time.

16                   **7.    AGREEMENT REGARDING PAYMENT OF OVERTIME:**

17                   **7.1    CITY'S EFFORTS**

18           The City's good faith efforts include having conducted the "white time" audit in June  
19 2000, requiring a provision regarding the prohibition of "white time" in the Memorandum of  
20 Understanding ("MOU") for the Police Officers, Lieutenant and Below Representation Unit,  
21 No. 24, 2001-2003, as reflected in Article 4.1.C of the MOU, and issuing the Notice from the  
22 LAPD Chief of Police entitled "Prohibition against Working Unauthorized Overtime to Prepare  
23 for Roll Call" on August 27, 2001. The reason the City has undertaken these remedial measures  
24 is because it believes these efforts are sufficient to establish a good faith corrective action  
25 affirmative defense as set forth in 29 U.S.C. § 260.

26                   **7.2    AGREEMENTS REGARDING UNCOMPENSATED TIME**

27           Plaintiffs agree not to work any uncompensated time and the City agrees that it will  
28 maintain a policy prohibiting supervisors from allowing Plaintiffs to work uncompensated time.

1 Both parties in these lawsuits agree that it is against the law to work uncompensated time.

2 **8. SETTLEMENT PROCEDURE:**

3 Upon preliminary approval of this Agreement by the City Council, Class Counsel shall  
4 commence notification to the *Brehm* and *Lara* plaintiffs this Agreement by November 7, 2002, in  
5 a manner reasonably calculated to give actual notice to all applicable plaintiffs of *Brehm* and  
6 *Lara*. The Notice shall contain this Settlement Agreement, a letter from Class Counsel and  
7 shall, at a minimum, advise in plain language:

- 8 a) A plaintiff must file any written objections to the Proposed Settlement  
9 with the Court no later than November 25, 2002, and serve copies of such  
10 objections upon counsel for the plaintiffs and the City;
- 11 b) The Court shall conduct a hearing to consider the objections of any  
12 plaintiff to the Proposed Settlement on December 9, 2002 at 1:30 p.m. in  
13 Courtroom 16 of the United States District Court in Los Angeles;
- 14 c) The Court shall determine whether the Proposed Settlement is fair,  
15 reasonable, and adequate after hearing any objections to the Proposed  
16 Settlement;
- 17 d) If the Court determines the Proposed Settlement is fair, reasonable, and  
18 adequate the Court shall enter a Stipulated Judgment in accordance with  
19 the terms of this Agreement;
- 20 e) The lack of a response from any particular plaintiff during the period for  
21 written objections shall be deemed as an acceptance of the terms of the  
22 Settlement Agreement;
- 23 f) The amount of liquidated damages which the plaintiff will receive  
24 pursuant to this Settlement Agreement, if the Agreement is approved by  
25 the Court;
- 26 g) The damages amount of back wages which the plaintiff will receive  
27 pursuant to this Settlement Agreement, if the Agreement is approved by  
28 the Court;

SCANNED

- h) The procedure for a plaintiff who chooses not to participate in the Settlement to dismiss his or her claims without prejudice; and
- i) Instructions regarding the method of acceptance of the Settlement Agreement.

Class Counsel and counsel for the City shall make best efforts to effectuate and implement the Settlement Agreement by notifying plaintiffs of *Brehm* and *Lara* of the terms of the Settlement Agreement and the events which will occur as the parties perform their obligations under the Agreement through departmental mail and/or U.S. mail.

**8.1 HEARING ON PROPOSED SETTLEMENT:**

The Court shall conduct a hearing to determine if the Proposed Settlement is fair, reasonable, and adequate on December 9, 2002, at 1:30 p.m. Any objections by any person to the Proposed Settlement must be filed with the Court and served on Class Counsel and counsel for the City no later than November 25, 2002. Class Counsel or counsel for the City may file a written response to the objections with the Court no later than December 3, 2002. If the Court determines that the Proposed Settlement is fair, reasonable, and adequate, the Court shall issue an order to that effect.

**8.2 DISMISSAL OF CLAIMS BY PLAINTIFFS:**

Any plaintiff who decides not to participate in the Settlement Agreement must file with the Court and serve on all counsel a dismissal of his or her claims without prejudice no later than December 13, 2002. The Court, if it issues an order that the Settlement is fair, reasonable, and adequate, shall enter a Stipulated Judgment in accordance with the terms of this Agreement on December 18, 2002, except as noted below. Either party shall have until December 16, 2002 to apply to the Court for permission to rescind its approval of the Agreement due to objections and/or dismissals by the plaintiffs. If such an application is made, the Court shall not enter a Stipulated Judgment until it rules on the application.

26 ///

27 ///

28 ///

1                   **8.2.1 REDUCTION OF SETTLEMENT AMOUNTS FOR**  
2                   **PLAINTIFFS WHO DISMISS THEIR CLAIMS:**

3           The total settlement amounts set forth in the Confidential Disbursement Order of this  
4 Agreement shall be reduced in accordance with the amounts set forth in the Confidential  
5 Disbursement Order for each Plaintiff who affirmatively elects not to be bound by the Settlement  
6 and dismisses their claims without prejudice according to the procedure set forth in paragraphs  
7 8(h) & 8.2. Specifically, the total amounts set forth in the Confidential Disbursement Order will  
8 be reduced by the amount set forth in the Confidential Disbursement Order for each *Brehm* or  
9 *Lara* plaintiff who dismisses his or her claims without prejudice. The Court shall enter an order  
10 returning to the City the sum of money awarded to each person who elects not to be bound by the  
11 Settlement Agreement awarded by the Confidential Disbursement Order.

12           **9. ANTI-RETALIATION:**

13           The FLSA prohibits retaliation by the City against plaintiffs, as set forth more fully at 29  
14 U.S.C. § 215(a)(3). No retaliatory action shall be taken against any plaintiff by the City for his  
15 or her participation in the litigation and/or settlement in the *Brehm* or *Lara* actions.

16           **10. DISCLOSURES AND REPRESENTATIONS:**

17           **10.1 CONSULTATION WITH COUNSEL:**

18           Plaintiffs have been informed of the opinion of Class Counsel, and have had sufficient  
19 time to consult with independent counsel with respect to the advisability of accepting the terms  
20 of this Agreement, and with respect to the releases, waivers, and all matters contained herein.  
21 Plaintiffs, in accepting the settlement, agree to the terms herein and hold harmless all attorneys,  
22 agents, servants or others acting relevant thereto. The City has had sufficient time to consult  
23 with counsel with respect to the advisability of executing this Agreement, and with respect to the  
24 releases, waivers, and all matters contained herein. The City and plaintiffs acknowledge that  
25 they have executed this Agreement without fraud, duress, or undue influence.

26           **10.2 NO RELIANCE ON PRIOR REPRESENTATIONS:**

27           Statements made in the past have been modified by changing circumstances. Plaintiffs  
28 and the City acknowledge that the circumstances in this settlement are unique. Plaintiffs, and

1 any other officer, agent, employee, representative, or attorney, have not made any statements,  
2 representations, or promises to the City regarding any facts which may be relied upon in  
3 executing this Agreement, except as expressly stated in this Agreement. Neither the City, nor  
4 any other officer, agent, employee, representative, or attorney, has made any statement,  
5 representation, or promise to the plaintiffs regarding any facts which may be relied upon in  
6 executing this Agreement, except as expressly stated in this Agreement.

7 **10.3 VOLUNTARY AND KNOWING WAIVER OF RIGHT:**

8 Each party acknowledges that he, she or it has carefully read this Agreement and has been  
9 advised fully by legal counsel of the legal and binding effect of its terms. Each party  
10 acknowledges that the only promises made to induce him, her, or it to sign this Agreement are  
11 those stated herein. Having been fully advised and informed, each party voluntarily enters into  
12 this Agreement and the waiver of rights covered by this Agreement. Each plaintiff realizes that  
13 he or she has a right under the FLSA or any other federal or state laws to minimum wages and  
14 unpaid overtime as set forth in the FLSA or any other federal or state laws. Each party agrees  
15 that he or she is entering into this Settlement Agreement because of uncertainty over the outcome  
16 of the litigation and the potential for plaintiffs to receive anywhere from no damages to full  
17 liquidated damages and attorneys' fees should these actions proceed to a final judgment and is  
18 therefore not waiving any entitlement to overtime that he or she possessed under the FLSA or  
19 any other federal or state laws.

20 Each party understands, acknowledges, and agrees that this is a compromise settlement of  
21 disputed claims, and that nothing herein shall be deemed or construed at any time or for any  
22 purpose as an admission of the merits of any claim or defense.

23 **10.4 ASSIGNMENT OF RIGHTS BY PLAINTIFFS:**

24 Except for such assignments, transfers, or grants which may have occurred upon  
25 operation of law, the parties have not heretofore assigned, transferred, or granted, or purported to  
26 assign, transfer, or grant, any of the claims, demands, causes of action, obligations, liens,  
27 judgments, orders, damages, liabilities, losses, costs and expenses of any kind, in law or in  
28 equity, whether known or unknown, that parties now hold, will ever hold, or have ever held



1 against the other related to this case, including, but not limited to: 1) any and all claims,  
2 demands, or causes of action reflected in the lawsuit; 2) any and all claims, demands, or causes  
3 of action arising out of or in any way connected with any transactions, occurrences, acts or  
4 omissions set forth or alleged in the lawsuit; or 3) any and all claims, demands, or causes of  
5 action arising out of or in any way connected with any transactions, occurrences, acts or  
6 omissions occurring prior to the entry of a Stipulated Judgment by the Court.

7 **11. REIMBURSEMENTS:**

8 The parties further agree that the amounts to be paid by the City to Class Counsel  
9 pursuant to the Confidential Disbursement Order of this Agreement constitutes full compensation  
10 of the attorneys' fees and costs to which the *Brehm* and *Lara* plaintiffs are entitled by law from  
11 the City. Any additional fees and/or costs associated with the prosecuting of the *Brehm* and *Lara*  
12 actions shall be borne solely by the *Brehm* and *Lara* plaintiffs and/or Class Counsel.

13 **12. JURISDICTION:**

14 This Agreement, upon execution by the parties and entry of a Stipulated Judgment by the  
15 Court, shall have the effect of a binding judgment. In the event of breach of this Agreement by  
16 any of the parties, the Court shall have the authority to enforce any and all of the terms and  
17 conditions contained herein for a five (5) year period commencing with the Court's approval of  
18 the terms of this Agreement. If any action is instituted to enforce this Agreement, the Court shall  
19 have jurisdiction to award attorneys' fees and costs to the prevailing party.

20 **13. ENTIRE AGREEMENT IS INTEGRATED:**

21 The parties agree that the obligations contained in this Agreement are the sole and only  
22 consideration for it, and that no representations or inducements have been made by any party, or  
23 such party's employees, agents, or attorneys, except as specifically set forth in this Agreement.  
24 There is no other Agreement, written or oral, express or implied, between the parties with respect  
25 to the subject matter of this Agreement except as explicitly referred to herein. This Agreement  
26 supersedes any previous oral or written agreements or understandings between the parties  
27 regarding any matter contained in the Agreement. This Agreement cannot be amended,  
28 ///



1 modified, or supplemented in any respect except by a written agreement executed by the parties  
2 identified in section 20 of this Agreement.

3 **14. SUCCESSORS:**

4 This Agreement shall be binding upon plaintiffs and their heirs, representatives,  
5 executors, administrators, successors and assigns, and shall inure to the benefit of each and all of  
6 the heirs, representatives, executors, administrators, successors, and assigns.

7 **15. JOINT DRAFTING OF AGREEMENT:**

8 The *Brehm* and *Lara* plaintiffs, through their Class Counsel, and the City, through its  
9 attorneys, have participated in the drafting of this Agreement. The attorneys for all parties by  
10 their signature on this Agreement approve it as to form, and accordingly, the normal rule of  
11 construction to the effect that any ambiguities are to be resolved against the drafting parties will  
12 not be employed in any interpretation of this Agreement.

13 **16. STIPULATED JUDGMENT:**

14 Upon execution by the parties in the manner set forth above and the Court's  
15 determination that the Proposed Settlement is fair, adequate, and reasonable, this Agreement  
16 shall be submitted to the Court for entry of a stipulated judgment.

17 **17. WITHHOLDING OF TAXES FROM SETTLEMENT AMOUNTS:**

18 The parties agree and the Court so determines that the lump sum cash payments set forth  
19 in Confidential Disbursement Order (Attachment A) to the Agreement that are designated as  
20 back wages are wages subject to full withholding of federal and state income and other payroll  
21 withholding taxes.

22 The parties agree and the Court so determines that the cash payments set forth in the  
23 Confidential Disbursement Order (Attachment A) to this Agreement that are designated as  
24 liquidated damages and/or attorneys' fees and costs, are not wages. Since these amounts are not  
25 wages, the parties believe that such amounts are not subject to federal and state income or other  
26 payroll tax withholding requirements, although they may be taxable as gross income.

27 Plaintiffs are encouraged to consult with a tax advisor or attorney to determine  
28 independently any federal, state, or local tax consequences of the settlement amounts, and no

1 opinion on any tax matter is expressed herein. Plaintiffs are solely responsible for reporting  
2 amounts received as liquidated damages pursuant to this Agreement to any applicable federal,  
3 state or local agency as required by law.

4 The withholding of taxes with respect to the disbursement of funds classified as wages  
5 under the Confidential Disbursement Order will be made in accordance with the W-4 form each  
6 plaintiff has on file with the City. No taxes will be withheld from the disbursement of funds  
7 classified as liquidated damages under the Confidential Disbursement Order. The parties agree  
8 that the City may report funds paid as liquidated damages on IRS Form 1099 as compensation  
9 paid to each plaintiff and shall not withhold from or remit payment to the Internal Revenue  
10 Service on account of such payment. Plaintiffs will be responsible for any and all taxes  
11 associated with this lump-sum payment for liquidated damages as designated in the Confidential  
12 Disbursement Order.

13 **18. FORCE MAJEURE:**

14 If any act of God, riot, natural disaster, war, armed conflict, or other event of a similar  
15 nature occurs which substantially impairs the ability of a party to perform the terms of this  
16 Agreement, then either party may terminate the Agreement upon application and approval by the  
17 Court.

18 **19. SEVERABILITY:**

19 This Agreement shall be considered severable, such that if any provision or part of the  
20 Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement  
21 shall remain in force and effect to the extent allowed by law, and all other provisions or parts  
22 shall remain in full force and effect.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

63 Ex. B 29-30

1       **20.    EXECUTION OF THIS AGREEMENT:**

2               **20.1   EXECUTION BY THE CITY:**

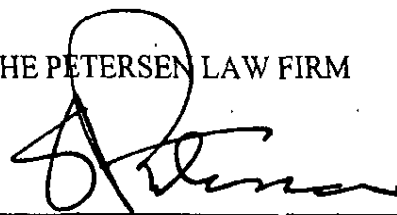
3               The Charter for the City provides that only the City Council has authority to enter into  
4 this Agreement. Therefore, this Agreement may only be approved by the City by an action of the  
5 City Council.

6               **20.2   EXECUTION BY THE PLAINTIFFS:**

7               This Agreement will be executed on behalf of plaintiffs by Class Counsel.


8  
9                               THE PETERSEN LAW FIRM

10  
11 DATED: 12/19, 2002

  
GREGORY G. PETERSEN, ESQ., Class Counsel  
in *Brehm v. City of Los Angeles* and *Lara v. City of Los Angeles*

12  
13  
14                               CITY OF LOS ANGELES

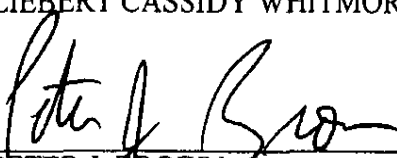
15  
16 DATED: 1/9, 200<sup>3</sup><sub>7</sub>

17 By:   
GARY G. GELSS  
Assistant City Attorney

18       **APPROVED AS TO FORM:**

19  
20                               LIEBERT CASSIDY WHITMORE

21  
22 DATED: 12/26, 2002

23 By:   
PETER J. BROWN  
Attorneys for Defendant, City of Los Angeles



**SETTLEMENT AGREEMENT AND RELEASE****RECITALS**

Beginning in 2000, a number of present and former police officers in the Los Angeles Police Department ("LAPD") individually retained The Petersen Law Firm to bring a lawsuit against their employer, the City of Los Angeles ("City"), a municipal corporation. Plaintiffs sought relief for an alleged violation of the federal Fair Labor Standards Act (hereinafter "FLSA"), 29 U.S.C. § 201 et seq., in regard to the payment of overtime, in an action entitled *Edward Brehm v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. CV-02-4979-JFW (JWJx) (formerly SACV 00-748-GLT (MLGx)) ("the Brehm litigation" or "the Brehm action").

In 2002, present and/or former police officers in the LAPD individually retained The Petersen Law Firm to file an action against the City, entitled *Stella Lara v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. 02-2185-GHK (RCx) ("the Lara litigation" or "the Lara action"), alleging that the City violated the provisions of the FLSA in regard to the payment of overtime.

The parties agreed on a settlement on or about January 9, 2003 on behalf of all Brehm and Lara plaintiffs, with the exception of plaintiffs Mell Hogg ("Hogg"), Jericho Velasquez ("Velasquez") and James Zourek ("Zourek"). Hogg, Velasquez and Zourek were not parties to the January 9, 2003 Settlement Agreement because they each were serving abroad in the United States military, and their claims could not be settled pursuant to the Soldiers and Sailors Civil Relief Act, 50 U.S.C. Appx., § 521. Hogg, Velasquez and Zourek have now returned from military leave, and the parties hereby enter into the following Settlement Agreement to resolve their claims in the manner set forth below:

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SCANNED

**1. PARTIES**

This Settlement Agreement ("Agreement") is made by and between Zourek, a named plaintiff in the Brehm action and/or the Lara action, and the City, a municipal corporation.

**2. DISPOSITION OF CLAIMS**

The parties, with the exception of Hogg, Velasquez and Zourek, due to their military leave, previously agreed to a comprehensive release in, and global settlement of, the Brehm and Lara actions. A true and correct copy of the January 9, 2003 Settlement Agreement is attached hereto as Exhibit "1," and the terms of said Settlement Agreement are incorporated herein by reference. The January 9, 2003 Settlement Agreement will hereinafter be referred to as "Exhibit 1" in this Agreement.

The purpose of this Agreement is to resolve and settle all outstanding claims, issues, and disputes in the Brehm and/or Lara actions brought by Zourek against the City for the City's alleged failure to compensate Zourek under the FLSA and any other applicable federal and state laws. In consideration of the City's payment of \$5,805.29 (\$2,901.68 for back pay, \$969.16 for liquidated damages and \$1,934.45 for attorneys' fees) to Castle, Petersen & Krause, LLP on behalf of Zourek, Zourek agrees to settle and release all the claims described more fully in Exhibit 1 to this Agreement. Zourek specifically agrees to waive any and all wage claims under federal and state law existing at the time Exhibit 1 was executed, including but not limited to, FLSA wage and hour claims and known FLSA retaliation claims, but excluding any workers' compensation claims. As set forth in Exhibit 1, nothing in this settlement will alter the terms and conditions of the prior agreements in the actions styled *Michael L. Kimpel v. Willie Williams* action, C.D. Cal. No. CV 93-3441-GHK(RNBx) and *Michael C. Huff v. Bernard Parks*, C.D. Cal. No. CV 98-10245-GHK(RNBx).

### 3. WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542

The parties understand that this Agreement extends to all grievances, disputes, or claims of every nature and kind, known or unknown, suspected or unsuspected, which are related to the claims of Zourek in the Brehm and Lara actions for unpaid wages, as described in the Recitals of Exhibit 1, including, but not limited to, any and all wage claims under the FLSA and under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims. The parties understand that this release does not address claims relating to any conduct or activity which occurs after the date of the execution of Exhibit 1, i.e., January 9, 2003. The parties further acknowledge that any and all rights granted them under section 1542 of the California Civil Code, which are related to the claims of Zourek for unpaid wages, are hereby expressly waived. This section 1542 waiver does not include retaliation claims. Section 1542 of the California Civil Code reads as follows:

**SECTION 1542. CERTAIN CLAIMS AFFECTED BY  
GENERAL RELEASE.**

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
HER SETTLEMENT WITH THE DEBTOR.**

### 4. RELEASE

Plaintiff Zourek and all of his respective attorneys, agents, and assignees, do hereby fully and forever release and discharge each other, the City and its past or present governing bodies,

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boards, officers, directors, attorneys, and agents, from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands which are related to his claims in the Brehm and Lara actions regarding the City's alleged violations of any and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage and hour claims under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims, if any, as described more fully in the Recitals of Exhibit 1.

The City hereby fully and forever releases and discharges Zourek and all of his respective attorneys, agents, and assignees from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands arising from plaintiffs' claims in the Brehm and Lara actions regarding the City's alleged violations of any and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage and hour claims under state law, including known retaliation claims under the FLSA related to the Brehm and Lara actions, but excluding workers' compensation claims, if any, as described in the Recitals of Exhibit 1.

**5. PAYMENT OF SETTLEMENT AMOUNTS AND DISMISSAL OF  
BREHM AND LARA ACTIONS**

Within thirty (30) days after the execution of this Agreement by the parties and approval as to form and content by their counsel, the City shall deliver checks and/or warrants to Zourek's attorneys of record, Castle, Petersen & Krause, LLP, in the following amounts:

a. The sum of \$2,901.68 for back pay (minus applicable withholdings as specified in section 12 of this Agreement) and \$969.16 for liquidated damages, made payable by separate checks and/or warrants to "James Zourek."



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b. The sum of \$1,934.45 to Zourek's attorneys of record, made payable by check and/or warrant to "Castle, Petersen & Krause, LLP."

Within fourteen (14) calendar days after the City delivers checks and/or warrants to Zourek's counsel of record in the amounts specified herein, Zourek's counsel of record shall file with the District Court all documents necessary to effectuate a stipulated judgment concerning Zourek's claims in the Brehm and Lara actions.

## **6. DISCLOSURES AND REPRESENTATIONS**

### **a. CONSULTATION WITH COUNSEL**

Plaintiff Zourek has been informed of the opinion of his counsel, Gregory G. Petersen of Castle, Petersen & Krause, LLP, with respect to the advisability of accepting the terms of this Agreement, and with respect to the releases, waivers, and all matters contained herein. Zourek, in accepting the settlement, agrees to the terms herein and holds harmless all attorneys, agents, servants or others acting relevant thereto. The City has had sufficient time to consult with counsel with respect to the advisability of executing this Agreement, and with respect to the releases, waivers, and all matters contained herein. The City and Zourek acknowledge that they have executed this Agreement without fraud, duress, or undue influence.

### **b. NO RELIANCE ON PRIOR REPRESENTATIONS**

Statements made in the past have been modified by changing circumstances. Plaintiff Zourek and the City acknowledge that the circumstances in this settlement are unique. Zourek and any other officer, agent, employee, representative, or attorney, have not made any statements, representations, or promises to the City regarding any facts which may be relied upon in executing this Agreement, except as expressly stated in this Agreement. Neither the City, nor any other officer, agent, employee, representative, nor attorney, has made any statement,

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representation, or promise to Zourek regarding any facts which may be relied upon in executing this Agreement, except as expressly stated in this Agreement.

**c. VOLUNTARY AND KNOWING WAIVER OF RIGHT**

Each party acknowledges that he or it has carefully read this Agreement and has been advised fully by legal counsel of the legal and binding effect of its terms. Each party acknowledges that the only promises made to induce him or it to sign this Agreement are those stated herein. Having been fully advised and informed, each party voluntarily enters into this Agreement and the waiver of rights covered by this Agreement. Zourek realizes that he has a right under the FLSA or any other federal or state laws to minimum wages and unpaid overtime as set forth in the FLSA or any other federal or state laws. Each party agrees that he or it is entering into this Settlement Agreement because of uncertainty over the outcome of the litigation and the potential for Zourek to receive anywhere from no damages to full liquidated damages and attorneys' fees should the Brehm and/or Lara actions proceed to a final judgment and is therefore not waiving any entitlement to overtime that he/it possessed under the FLSA or any other federal or state laws.

Each party understands, acknowledges, and agrees that this is a compromise settlement of disputed claims, and that nothing herein shall be deemed or construed at any time or for any purpose as an admission of the merits of any claim or defense.

**d. ASSIGNMENT OF RIGHTS BY PLAINTIFF**

Except for such assignments, transfers, or grants which may have occurred upon operation of law, the parties have not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, causes of action, obligations, liens, judgments, orders, damages, liabilities, losses, costs and expenses of any kind, in law or in

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equity, whether known or unknown, that parties now hold, will ever hold, or have ever held against the other related to this case, including, but not limited to: 1) any and all claims, demands, or causes of action reflected in the lawsuit; 2) any and all claims, demands, or causes of action arising out of or in any way connected with any transactions, occurrences, acts or omissions set forth or alleged in the lawsuit; or 3) any and all claims, demands, or causes of action arising out of or in any way connected with any transactions, occurrences, acts or omissions occurring prior to the execution of Exhibit 1.

#### **7. REIMBURSEMENTS AND ATTORNEYS' FEES**

The parties further agree that the amounts to be paid by the City to Zourek's counsel of record, Castle, Petersen & Krause, LLP, constitute full compensation of the attorneys' fees and costs to which plaintiffs are entitled by law from the City. Any additional fees and/or costs associated with the prosecution of the Brehm and Lara actions shall be borne solely by the Brehm and Lara plaintiffs and/or their counsel. However, if any action at law or in equity, including any action for declaratory relief, is brought to enforce any or all of the provisions of this Agreement, the prevailing party will be entitled to and shall be awarded reasonable attorneys' fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

#### **8. ENTIRE AGREEMENT IS INTEGRATED**

The parties agree that the obligations contained in this Agreement are the sole and only consideration for it, and that no representations or inducements have been made by any party, or such party's employees, agents, or attorneys, except as specifically set forth in this Agreement. There is no other Agreement, written or oral, express or implied, between the parties with respect to the subject matter of this Agreement except as explicitly referred to herein. This Agreement

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supersedes any previous oral or written agreements or understandings between the parties regarding any matter contained in the Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a written agreement executed by all the parties to this Agreement.

#### **9. SUCCESSORS**

This Agreement shall be binding upon Zourek and his heirs, representatives, executors, administrators, successors and assigns, and shall inure to the benefit of each and all of the heirs, representatives, executors, administrators, successors, and assigns.

#### **10. JOINT DRAFTING OF AGREEMENT**

Zourek, through his attorneys, and the City, through its attorneys, have participated in the drafting of this Agreement. The attorneys for all parties by their signature on this Agreement approve it as to form, and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting parties will not be employed in any interpretation of this Agreement.

#### **11. STIPULATED JUDGMENT**

Upon execution by the parties and the Court's determination that the proposed settlement amount is fair, adequate, and reasonable, counsel for Zourek shall prepare the necessary documents and submit this Agreement to the Court for entry of a stipulated judgment.

#### **12. WITHHOLDING OF TAXES FROM SETTLEMENT AMOUNTS**

The parties agree that the payments described in section 5 of this Agreement are subject to the tax treatment described below. The amount specified in subparagraph "a" shall be subject to legally required deductions and withholdings. The amounts specified in subparagraphs "b" and "c" shall be paid without withholdings.

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a. **Lost Income/Back Pay:** As to the payment of \$2,901.68 to Zourek in settlement of all claims, the parties agree that this amount shall be subject to income tax and other legally required withholding, and will be reported by the City as income to Zourek on an IRS Form W-2.

b. **Liquidated Damages:** As to the payment of \$969.16 to Zourek in settlement of all claims, the parties agree that this amount represents liquidated damages and that this amount shall not be subject to income tax or other withholdings. The City will issue an IRS Form 1099 to Zourek in the amount of \$969.19.

c. **Attorneys' Fees:** As to the payment of \$1,934.45 paid to Zourek's counsel of record, Castle, Petersen & Krause, LLP, for attorneys' fees incurred on Zourek's behalf, the City will issue an IRS Form 1099 to Castle, Petersen & Krause, LLP in the amount of \$1,934.45.

The attorneys for the City and for Zourek make no warranty, representation or characterization regarding the tax obligations or consequences related to this Agreement. Zourek and/or his counsel of record are solely responsible for any and all taxes associated with the payments made to Zourek and his counsel of record under this Agreement.

### 13. SEVERABILITY

This Agreement shall be considered severable, such that if any provision or part of the Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement shall remain in force and effect to the extent allowed by law, and all other provisions or parts shall remain in full force and effect.

JAMES ZOUREK

DATED: December 23, 2005

By: 

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James Zourek, Plaintiff

CITY OF LOS ANGELES


DATED: December \_\_, 2005

By: \_\_\_\_\_  
Gary Geuss, Esq.  
Chief Assistant City Attorney

APPROVED AS TO FORM:

CASTLE, PETERSEN &amp; KRAUSE LLP

DATED: December \_\_, 2005

By:  \_\_\_\_\_  
Gregory G. Petersen, Esq.  
Attorneys for Plaintiff  
JAMES ZOUREK

LIEBERT CASSIDY WHITMORE

DATED: December \_\_, 2005

By: \_\_\_\_\_  
Brian P. Walter, Esq.  
Attorneys for Defendant  
CITY OF LOS ANGELES

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and/or his counsel of record are solely responsible for any and all taxes associated with the payments made to Zourek and his counsel of record under this Agreement.

**13. SEVERABILITY**

This Agreement shall be considered severable, such that if any provision or part of the Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement shall remain in force and effect to the extent allowed by law, and all other provisions or parts shall remain in full force and effect.

**JAMES ZOUREK**

DATED: December \_\_, 2005

By: \_\_\_\_\_  
James Zourek, Plaintiff

**CITY OF LOS ANGELES**

DATED: December 22, 2005

By:   
Gary Geuss, Esq.  
Chief Assistant City Attorney

**APPROVED AS TO FORM:**

**CASTLE, PETERSEN & KRAUSE LLP**

DATED: December \_\_, 2005

By: \_\_\_\_\_  
Gregory G. Petersen, Esq.  
Attorneys for Plaintiff  
**JAMES ZOUREK**

**LIEBERT CASSIDY WHITMORE**

DATED: December \_\_, 2005

By: \_\_\_\_\_  
Brian P. Walter, Esq.

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James Zourek, Plaintiff

CITY OF LOS ANGELES

DATED: December \_\_, 2005

By: \_\_\_\_\_  
Gary Geuss, Esq.  
Chief Assistant City Attorney

APPROVED AS TO FORM:

CASTLE, PETERSEN & KRAUSE LLP

DATED: December \_\_, 2005

By: \_\_\_\_\_  
Gregory G. Petersen, Esq.  
Attorneys for Plaintiff  
JAMES ZOUREK

DATED: Jan. 5, 2006  
~~December \_\_, 2005~~

LIEBERT CASSIDY WHITMORE

By: \_\_\_\_\_  
Brian P. Walter, Esq.  
Attorneys for Defendant  
CITY OF LOS ANGELES

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SETTLEMENT AGREEMENT AND RELEASE

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## RECITALS

Beginning in 2000, a number of present and former police officers in the Los Angeles Police Department ("LAPD") individually retained The Petersen Law Firm to bring a lawsuit against their employer, the City of Los Angeles ("City"), a municipal corporation. Plaintiffs sought relief for an alleged violation of the federal Fair Labor Standards Act (hereinafter "FLSA"), 29 U.S.C. § 201 *et seq.*, in regard to the payment of overtime, in an action entitled *Edward Brehm v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. CV-02-4979-JFW (JWJx) (formerly SACV 00-748-GLT (MLGx)) ("the *Brehm* litigation" or "the *Brehm* action");

One provision of the FLSA, 29 U.S.C. § 216(b), allows employees to join a representative collective action under the FLSA by filing consents to join with the District Court, and approximately 573 present or former LAPD officers joined the *Brehm* litigation prior to the District Court-imposed deadline of April 1, 2001. Since the filing of the lawsuit, about 80 plaintiffs have been dismissed from the litigation, leaving four hundred ninety-three (493) plaintiffs to participate in the terms of this Settlement Agreement and Release;

In 2002, present and/or former police officers in the LAPD individually retained The Petersen Law Firm to file an action against the City, entitled *Stella Lara v. City of Los Angeles*, U.S. District Court, C.D. Cal. No. 02-2185-GHK (RCx) ("the *Lara* litigation" or "the *Lara* action"), alleging that the City violated the provisions of the FLSA in regard to the payment of overtime;

About 17 present and/or former police officers have joined the *Lara* litigation as of the stipulated opt-in cut-off deadline of August 28, 2002. The allegations in the *Brehm* and *Lara* actions are essentially the same, although not every claim is alleged by every plaintiff;

The *Brehm* and *Lara* plaintiffs claim that the City violated the FLSA, and other applicable federal and state wage laws, by requiring the plaintiffs to work overtime hours without compensation. Plaintiffs allege they were told or pressured by their supervising officers not to submit an overtime slip, but rather to adjust or flex their schedules, known as "white time."

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1 Plaintiffs allege they could not adjust off all of the hours of uncompensated overtime they had  
2 accumulated within the same deployment period in which the hours were worked, and in some  
3 circumstances were never able to use those "white time" hours. On some of the occasions that  
4 plaintiffs did in fact adjust their schedules, plaintiffs allege that the hours were taken off at the  
5 rate of only one hour off for each hour (hour for hour or "straight time") of overtime worked,  
6 instead of at the time and a half premium rate.

7 Plaintiffs asserted three additional specific claims as to the City's alleged violations of 29  
8 U.S.C. § 207(k) and 29 U.S.C. § 207(o), in regards to the City's denials of the plaintiffs' requests  
9 to be paid overtime compensation and the widespread implementation of an alleged unofficial  
10 compensatory time off system. The first claim asserts that the City required plaintiffs to start  
11 working before their regularly scheduled start of watch in order to prepare for roll call without  
12 compensation. The second claim asserts that the City required plaintiffs to work through their  
13 scheduled meal period without compensation. The third claim asserts that the City required  
14 plaintiffs to work past their regularly scheduled end of watch without compensation. The City  
15 denies these claims. Plaintiffs allege the City willfully violated 29 U.S.C. § 206, the minimum  
16 wage provision of the FLSA, by failing to pay for all overtime hours worked, and the City failed  
17 to keep or maintain any records of each of the plaintiffs' actual number of hours worked, in  
18 violation of 29 U.S.C. § 211(c). The parties dispute whether any hours were being worked  
19 without compensation.

20 The parties have already expended millions of dollars in costs and attorney's fees during  
21 the litigation of the *Brehm* and *Lara* actions. Had the *Brehm* and *Lara* actions not settled, the  
22 parties expected years of continued litigation at a cost of millions of additional dollars in  
23 attorneys' fees. The settlement was reached after extensive negotiations;

24 Had these actions not settled as set forth hereinafter, the parties were anticipating a trial in  
25 June 2003 on the claims of each plaintiff that they were unlawfully denied the payment of  
26 overtime compensation, which could have entailed hundreds of depositions and trials of each  
27 claim, including individual discovery and trial of each claim by each plaintiff that

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1 uncompensated hours were worked. The parties anticipated that this aspect of the litigation alone  
2 would have consumed years of litigation at immense cost to both sides;

3       Additionally, the parties anticipated litigating whether plaintiffs were entitled to  
4 compensation for "gap time," whether the City could offset certain payments to plaintiffs against  
5 any FLSA or state law overtime liability, whether an average of plaintiffs' estimated range of  
6 hours worked could be used to determine damages, and whether the City acted in good faith or  
7 willfully violated the FLSA or any other applicable federal or state laws. The parties also took  
8 into account the unpredictability of recovery, which for the failure to pay overtime for time  
9 worked could have been as great as full liquidated damages or as little as nothing, depending on  
10 whether the City was able to establish that it acted in good faith pursuant to 29 U.S.C. § 260.  
11 The parties fully expected that whatever the outcome in the District Court, there was a high  
12 probability of appeal by both sides on numerous issues. After numerous hours of negotiations  
13 and evaluation of the merits and potential damages, the parties view this settlement as a  
14 compromise of the risks attendant to both sides in continuing the litigation. The City admits no  
15 liability but settles the matter solely due to the costs of litigating these actions;

16       The parties hereby enter into the following Settlement Agreement:

17       **1. PARTIES:**

18       This Settlement Agreement ("Agreement") is made by and between the named plaintiffs  
19 in *Edward Brehm v. City of Los Angeles*, C.D. Cal. No. CV-02-4979-JFW (JWJx) (formerly  
20 SACV 00-748-GLT (MLGx)), and all persons who have filed a consent to join the *Brehm* action  
21 (hereinafter "*Brehm* plaintiffs"), and Stella Lara and all persons who have filed a consent to join  
22 the *Stella Lara v. City of Los Angeles*, No. 02-2185-GHK (RCx) action (hereinafter "*Lara*  
23 plaintiffs"), collectively referred to as "plaintiffs", and the City of Los Angeles (hereinafter  
24 "City"), a municipal corporation. Although the *Brehm* and *Lara* actions have not yet been  
25 consolidated by the Court, the parties agree that the cases are related and should be deemed  
26 consolidated.

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1           **2.     DEFINITIONS:**

2                   **2.1     LAPD:**

3           As used in this Agreement, "LAPD" refers to the Los Angeles Police Department.

4                   **2.2     SWORN EMPLOYEE:**

5           As used in this Agreement, "sworn employee" refers to a sworn employee of the LAPD  
6 holding the rank of lieutenant or below.

7                   **2.3     FLSA:**

8           As used in this Agreement, "FLSA" refers to the Fair Labor Standards Act of 1938, 29  
9 U.S.C. §§ 201-219 and the Portal to Portal Act of 1947, 29 U.S.C. §§ 251-262.

10                   **2.4     DEPLOYMENT PERIOD**

11           As used in this Agreement, "Deployment Period" ("DP") refers to a sworn employee's  
12 twenty-eight (28) day work period.

13                   **2.5     OVERTIME:**

14           As used in this Agreement, unless otherwise indicated, "overtime" refers to both FLSA  
15 overtime and non-FLSA overtime.

16                   **2.6     FLSA OVERTIME:**

17           As used in this Agreement, "FLSA overtime" refers to hours actually worked by a sworn  
18 employee of the LAPD during a twenty-eight (28) day work period (deployment period) which  
19 exceed one hundred seventy-one (171) hours.

20                   **2.7     NON-FLSA OVERTIME:**

21           As used in this Agreement, "non-FLSA overtime" refers to the compensation of a sworn  
22 employee with overtime pursuant to the Memorandum of Understanding for the Police Officers,  
23 Lieutenant and Below Representation Unit with the City for any hours worked or activities  
24 which are not FLSA overtime hours.

25                   **2.8     WHITE TIME:**

26           As used in this Agreement, "white time" refers to unofficial compensatory time off given  
27 to plaintiffs for working overtime hours.

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1                   **2.9    EXTENDED END OF WATCH:**

2                   As used in this Agreement, "extended end of watch" time refers to time worked past a  
3 sworn employee's regularly scheduled watch (duty day).

4                   **2.10   ROLL CALL PREPARATION:**

5                   As used in this Agreement, "roll call preparation" refers to time worked before or prior to  
6 a sworn employee's start of watch (duty day) to prepare for roll call.

7                   **2.11   CODE 7**

8                   As used in this Agreement, "Code 7" refers to a sworn employee's meal period during  
9 their scheduled watch hours, which may be either a 30 minute or a 45 minute break, depending  
10 on rank and assignment.

11                   **2.12   CLASS COUNSEL:**

12                   As used in this Agreement, "Class Counsel" refers to Gregory G. Petersen, Esq., the  
13 attorney representing the *Brehm* and *Lara* plaintiffs.

14                   **3.       CLASS STATUS:**

15                   **3.1       STIPULATION OF FACT:**

16                   The *Brehm* and *Lara* actions are representative collective/class actions under section  
17 216(b) of the FLSA. Each plaintiff in *Brehm* or *Lara* who was not named in the complaints filed  
18 a consent to join the actions. Each of the plaintiffs herein have common questions of law and  
19 fact which predominate.

20                   **3.2       CLASS COUNSEL:**

21                   Gregory G. Petersen, Esq., has been designated to be Class Counsel for plaintiffs in the  
22 *Brehm* and *Lara* actions.

23                   **4.       PURPOSE OF AGREEMENT:**

24                   The purpose of this Agreement is to resolve and settle all outstanding claims, issues, and  
25 disputes in the *Brehm* and *Lara* actions brought by plaintiffs against the City for the City's  
26 alleged failure to compensate plaintiffs for all hours worked under the FLSA and any other  
27 applicable federal and state laws. The parties agree to a comprehensive release in, and global  
28 settlement of, the *Brehm v. City of Los Angeles* and *Lara v. City of Los Angeles* actions. The

1 plaintiffs in these actions agree to settle any and all wage claims under federal and state law,  
2 including, but not limited to, FLSA wage and hour claims and known FLSA retaliation claims,  
3 but excluding any workers' compensation claims. However, nothing in this settlement will alter  
4 the terms and conditions of the prior agreements in the *Michael L. Kimpel v. Willie Williams*  
5 action, C.D. Cal. No. CV 93-3441-GHK(RNBx), and in the *Michael C. Huff v. Bernard Parks*,  
6 C.D. Cal. No. CV 98-10245-GHK(RNBx).

7 The claims of plaintiffs which are being compromised are set forth above in the Recitals  
8 of this Agreement. The parties dispute each of the issues as set forth above in the Recitals, and  
9 the City denies the plaintiffs' allegations as set forth above in the Recitals. The parties wish to  
10 finally settle and resolve all disputes and controversies regarding claims under the FLSA, and  
11 other applicable federal and state wage laws, but excluding any workers' compensation claims, in  
12 order to make their peace and to avoid the uncertainties of further litigation and the expense  
13 incident thereto.

14 **5. WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542:**

15 The parties understand that this Agreement extends to all grievances, disputes, or claims  
16 of every nature and kind, known or unknown, suspected or unsuspected, which are related to  
17 Plaintiffs' claims in the *Brehm* and *Lara* actions for unpaid wages, as described in the Recitals of  
18 this Agreement, including, but not limited to, any and all wage claims under the FLSA and under  
19 state law, including known retaliation claims under the FLSA related to the *Brehm* and *Lara*  
20 actions, but excluding workers' compensation claims. The parties understand that this release  
21 does not address claims relating to any conduct or activity which occurs after the date of the  
22 Court's entry of judgment which, pursuant to paragraph 8.2, the parties expect will occur on  
23 December 16, 2002. The parties further acknowledge that any and all rights granted them under  
24 section 1542 of the California *Civil Code*, which are related to Plaintiffs' claims for unpaid  
25 wages, are hereby expressly waived. This section 1542 waiver does not include retaliation  
26 claims. Section 1542 of the California *Civil Code* reads as follows:

27 **SECTION 1542. CERTAIN CLAIMS AFFECTED BY GENERAL**  
28 **RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**

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1 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST  
2 IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
3 WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED  
4 HIS SETTLEMENT WITH THE DEBTOR.

5 **5.1 RELEASE:**

6 Plaintiffs, and all of their respective attorneys, agents, and assignees, do hereby fully and  
7 forever release and discharge each other, the City and its past or present governing bodies,  
8 boards, officers, directors, attorneys, and agents, from any and all causes of action, actions,  
9 judgments, liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands  
10 which are related to plaintiffs' claims in the *Brehm* and *Lara* actions regarding the City's alleged  
11 violations of any and all wage laws, including but not limited to FLSA wage and hour claims,  
12 and applicable wage and hour claims under state law, including known retaliation claims under  
13 the FLSA related to the *Brehm* and *Lara* actions, but excluding workers' compensation laws, as  
14 described in the Recitals of this Agreement.

15 The City hereby fully and forever releases and discharges plaintiffs and all of their  
16 respective attorneys, agents, and assignees from any and all causes of action, actions, judgments,  
17 liens, indebtedness, damages, losses, claims, liabilities, grievances, and demands arising from  
18 plaintiffs' claims in the *Brehm* and *Lara* actions regarding the City's alleged violations of any  
19 and all wage laws, including but not limited to FLSA wage and hour claims, and applicable wage  
20 and hour claims under state law, including known retaliation claims under the FLSA related to  
21 the *Brehm* and *Lara* actions, but excluding workers' compensation laws, as described in the  
22 Recitals of this Agreement.

23 **6. PAYMENT AND PAYMENT SCHEDULES**

24 **6.1 BREHM AND LARA PLAINTIFFS**

25 The total sum to be paid by the City pursuant to this Agreement is six million seven  
26 hundred twenty thousand dollars (\$6,720,000) payable as set forth in the Confidential  
27 Disbursement Order ("Attachment A") of the Agreement.

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1 Each of the following must occur prior to the City paying any funds pursuant to this  
2 Agreement:

- 3 a) Notice of this settlement is provided to all *Brehm* and *Lara*  
4 plaintiffs by November 7, 2002;  
5 b) Plaintiffs are provided an opportunity to object to the proposed  
6 settlement by November 25, 2002;  
7 c) A hearing is held on December 9, 2002 at 1:30 p.m. regarding any  
8 of the plaintiffs' objections to the proposed settlement, if any;  
9 d) The Court approves of the terms of this Agreement on  
10 December 10, 2002;  
11 e) Plaintiffs are permitted to opt-out of this settlement by dismissing  
12 their claims without prejudice by December 13, 2002; and  
13 f) The Court enters a stipulated judgment on December 18, 2002.

14 The six million seven hundred twenty thousand dollars (\$6,720,000) shall be divided in  
15 accordance with the Confidential Disbursement Order filed with the Court under seal. The  
16 Confidential Disbursement Order will identify each plaintiff's liquidated damages, back wages  
17 portion of the damages, and the attorneys' fees to be paid to Class Counsel and shall remain  
18 confidential as it reveals personal information pertaining to sworn law enforcement officers. The  
19 gross amount to be received by each of the *Brehm* and *Lara* plaintiffs (before withholding of  
20 taxes, where legally required) for both the liquidated damages and back wages (before Class  
21 Counsel withholding of fees and costs of suit) is set forth in the Confidential Disbursement Order  
22 of this Agreement.

23 By December 23, 2002, the City shall forward to Class Counsel a warrant for plaintiffs'  
24 liquidated damages claims as set forth in the Confidential Disbursement Order, less appropriate  
25 attorney's fees and costs of suit to be determined in accordance with plaintiffs' retainer  
26 agreement with Class Counsel. This sum is to be deposited by Class Counsel in a trust account  
27 for the *Brehm* and *Lara* plaintiffs and disbursed by Class Counsel to each of the *Brehm* and *Lara*  
28 plaintiffs as set forth in the Confidential Disbursement Order.

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1 Within seven (7) calendar days after all of the above have occurred, *i.e.*, by December 30,  
2 2002, the City shall pay plaintiffs the gross amount of back overtime wages owed, less legally  
3 required withholdings. Specifically, the City shall provide each individual plaintiff a warrant  
4 (and a receipt to Class Counsel) representing the gross back overtime wages amount as set forth  
5 in the Confidential Disbursement Order for each individual plaintiff, less legally required  
6 withheld taxes and less appropriate fees and costs of suits to be determined solely between each  
7 plaintiff and Class Counsel and as set forth in the Confidential Disbursement Order.

8 Each check transmitted to a plaintiff shall include the following notice:

9 "On November 7, 2002, The Petersen Law Firm transmitted a Notice to you  
10 regarding the proposed settlement of the *Brehm v. City of Los Angeles* and *Lara v.*  
11 *City of Los Angeles* lawsuits. Pursuant to such Notice, you were given until  
12 November 25, 2002 to file objections to the settlement with the Court. The Court  
13 conducted a hearing regarding the settlement on December 9, 2002 and thereafter  
14 approved the settlement as a fair, reasonable and adequate resolution of plaintiffs'  
15 claims. Pursuant to the Notice and the terms of the Settlement Agreement, you  
16 became bound by the terms of the settlement when you did not opt-out of the  
17 settlement by the December 13, 2002 deadline. A stipulated judgment was  
18 entered by the Court on December 18, 2002. The enclosed check concludes this  
19 case and all matters related thereto."

20 On January 2, 2003, a warrant shall be sent by the City to Class Counsel that is made  
21 payable to Class Counsel for partial attorneys' fees and costs in litigating the *Brehm* and *Lara*  
22 actions as set forth in the Confidential Disbursement Order. Finally, no later than January 6,  
23 2003, the City shall forward to Class Counsel a final warrant. The final warrant to be sent to  
24 Class Counsel shall be made payable to Class Counsel by the City for the remaining attorneys'  
25 fees and costs in litigating the *Brehm* and *Lara* actions as set forth in the Confidential  
26 Disbursement Order.

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1                   **6.2    DISMISSAL OF BREHM AND LARA ACTIONS:**

2           Within fourteen (14) calendar days after payment by the City of the sums required under  
3 the Confidential Disbursement Order of this Agreement, Class Counsel shall file with the District  
4 Court all documents necessary to effectuate a dismissal, with prejudice, of the *Brehm* and *Lara*  
5 actions, except for the three plaintiffs identified in Section 6.3 of this Agreement.

6                   **6.3    STAY FOR PLAINTIFFS CURRENTLY IN MILITARY SERVICE**

7           Plaintiffs Mell Hogg, Jericho Velasquez, and James Zourek are currently in military  
8 service on active duty. The parties acknowledge that their claims are not dismissed or otherwise  
9 compromised by this Agreement pursuant to the Soldiers and Sailors Civil Relief Act, 50 U.S.C.  
10 Appx., § 521. Their claims shall be stayed until their return from military service. Upon the  
11 expiration of their active military service, the above-mentioned plaintiffs shall have the right to  
12 litigate this action, including the right to settle their claims, to serve and be served with discovery  
13 and motions, and to try their claims. The parties agree that the amount paid pursuant to this  
14 Agreement has been reduced by \$30,000 from \$6,750,000 to \$6,720,000 since those three  
15 plaintiffs are not a party to the Agreement and will not dismiss their claims at this time.

16                   **7.    AGREEMENT REGARDING PAYMENT OF OVERTIME:**

17                   **7.1    CITY'S EFFORTS**

18           The City's good faith efforts include having conducted the "white time" audit in June  
19 2000, requiring a provision regarding the prohibition of "white time" in the Memorandum of  
20 Understanding ("MOU") for the Police Officers, Lieutenant and Below Representation Unit,  
21 No. 24, 2001-2003, as reflected in Article 4.1.C of the MOU, and issuing the Notice from the  
22 LAPD Chief of Police entitled "Prohibition against Working Unauthorized Overtime to Prepare  
23 for Roll Call" on August 27, 2001. The reason the City has undertaken these remedial measures  
24 is because it believes these efforts are sufficient to establish a good faith corrective action  
25 affirmative defense as set forth in 29 U.S.C. § 260.

26                   **7.2    AGREEMENTS REGARDING UNCOMPENSATED TIME**

27           Plaintiffs agree not to work any uncompensated time and the City agrees that it will  
28 maintain a policy prohibiting supervisors from allowing Plaintiffs to work uncompensated time.

1 Both parties in these lawsuits agree that it is against the law to work uncompensated time.

2 **8. SETTLEMENT PROCEDURE:**

3 Upon preliminary approval of this Agreement by the City Council, Class Counsel shall  
4 commence notification to the *Brehm* and *Lara* plaintiffs this Agreement by November 7, 2002, in  
5 a manner reasonably calculated to give actual notice to all applicable plaintiffs of *Brehm* and  
6 *Lara*. The Notice shall contain this Settlement Agreement, a letter from Class Counsel and  
7 shall, at a minimum, advise in plain language:

- 8 a) A plaintiff must file any written objections to the Proposed Settlement  
9 with the Court no later than November 25, 2002, and serve copies of such  
10 objections upon counsel for the plaintiffs and the City;
- 11 b) The Court shall conduct a hearing to consider the objections of any  
12 plaintiff to the Proposed Settlement on December 9, 2002 at 1:30 p.m. in  
13 Courtroom 16 of the United States District Court in Los Angeles;
- 14 c) The Court shall determine whether the Proposed Settlement is fair,  
15 reasonable, and adequate after hearing any objections to the Proposed  
16 Settlement;
- 17 d) If the Court determines the Proposed Settlement is fair, reasonable, and  
18 adequate the Court shall enter a Stipulated Judgment in accordance with  
19 the terms of this Agreement;
- 20 e) The lack of a response from any particular plaintiff during the period for  
21 written objections shall be deemed as an acceptance of the terms of the  
22 Settlement Agreement;
- 23 f) The amount of liquidated damages which the plaintiff will receive  
24 pursuant to this Settlement Agreement, if the Agreement is approved by  
25 the Court;
- 26 g) The damages amount of back wages which the plaintiff will receive  
27 pursuant to this Settlement Agreement, if the Agreement is approved by  
28 the Court;

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- 1 h) The procedure for a plaintiff who chooses not to participate in the  
2 Settlement to dismiss his or her claims without prejudice; and  
3 i) Instructions regarding the method of acceptance of the Settlement  
4 Agreement.

5 Class Counsel and counsel for the City shall make best efforts to effectuate and  
6 implement the Settlement Agreement by notifying plaintiffs of *Brehm* and *Lara* of the terms of  
7 the Settlement Agreement and the events which will occur as the parties perform their  
8 obligations under the Agreement through departmental mail and/or U.S. mail.

9 **8.1 HEARING ON PROPOSED SETTLEMENT:**

10 The Court shall conduct a hearing to determine if the Proposed Settlement is fair,  
11 reasonable, and adequate on December 9, 2002, at 1:30 p.m. Any objections by any person to  
12 the Proposed Settlement must be filed with the Court and served on Class Counsel and counsel  
13 for the City no later than November 25, 2002. Class Counsel or counsel for the City may file a  
14 written response to the objections with the Court no later than December 3, 2002. If the Court  
15 determines that the Proposed Settlement is fair, reasonable, and adequate, the Court shall issue an  
16 order to that effect.

17 **8.2 DISMISSAL OF CLAIMS BY PLAINTIFFS:**

18 Any plaintiff who decides not to participate in the Settlement Agreement must file with  
19 the Court and serve on all counsel a dismissal of his or her claims without prejudice no later than  
20 December 13, 2002. The Court, if it issues an order that the Settlement is fair, reasonable, and  
21 adequate, shall enter a Stipulated Judgment in accordance with the terms of this Agreement on  
22 December 18, 2002, except as noted below. Either party shall have until December 16, 2002 to  
23 apply to the Court for permission to rescind its approval of the Agreement due to objections  
24 and/or dismissals by the plaintiffs. If such an application is made, the Court shall not enter a  
25 Stipulated Judgment until it rules on the application.

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1                                   **8.2.1 REDUCTION OF SETTLEMENT AMOUNTS FOR**  
2                                   **PLAINTIFFS WHO DISMISS THEIR CLAIMS:**

3           The total settlement amounts set forth in the Confidential Disbursement Order of this  
4 Agreement shall be reduced in accordance with the amounts set forth in the Confidential  
5 Disbursement Order for each Plaintiff who affirmatively elects not to be bound by the Settlement  
6 and dismisses their claims without prejudice according to the procedure set forth in paragraphs  
7 8(h) & 8.2. Specifically, the total amounts set forth in the Confidential Disbursement Order will  
8 be reduced by the amount set forth in the Confidential Disbursement Order for each *Brehm* or  
9 *Lara* plaintiff who dismisses his or her claims without prejudice. The Court shall enter an order  
10 returning to the City the sum of money awarded to each person who elects not to be bound by the  
11 Settlement Agreement awarded by the Confidential Disbursement Order.

12           **9. ANTI-RETALIATION:**

13           The FLSA prohibits retaliation by the City against plaintiffs, as set forth more fully at 29  
14 U.S.C. § 215(a)(3). No retaliatory action shall be taken against any plaintiff by the City for his  
15 or her participation in the litigation and/or settlement in the *Brehm* or *Lara* actions.

16           **10. DISCLOSURES AND REPRESENTATIONS:**

17                   **10.1 CONSULTATION WITH COUNSEL:**

18           Plaintiffs have been informed of the opinion of Class Counsel, and have had sufficient  
19 time to consult with independent counsel with respect to the advisability of accepting the terms  
20 of this Agreement, and with respect to the releases, waivers, and all matters contained herein.  
21 Plaintiffs, in accepting the settlement, agree to the terms herein and hold harmless all attorneys,  
22 agents, servants or others acting relevant thereto. The City has had sufficient time to consult  
23 with counsel with respect to the advisability of executing this Agreement, and with respect to the  
24 releases, waivers, and all matters contained herein. The City and plaintiffs acknowledge that  
25 they have executed this Agreement without fraud, duress, or undue influence.

26                   **10.2 NO RELIANCE ON PRIOR REPRESENTATIONS:**

27           Statements made in the past have been modified by changing circumstances. Plaintiffs  
28 and the City acknowledge that the circumstances in this settlement are unique. Plaintiffs, and

1 any other officer, agent, employee, representative, or attorney, have not made any statements,  
2 representations, or promises to the City regarding any facts which may be relied upon in  
3 executing this Agreement, except as expressly stated in this Agreement. Neither the City, nor  
4 any other officer, agent, employee, representative, or attorney, has made any statement,  
5 representation, or promise to the plaintiffs regarding any facts which may be relied upon in  
6 executing this Agreement, except as expressly stated in this Agreement.

7 **10.3 VOLUNTARY AND KNOWING WAIVER OF RIGHT:**

8 Each party acknowledges that he, she or it has carefully read this Agreement and has been  
9 advised fully by legal counsel of the legal and binding effect of its terms. Each party  
10 acknowledges that the only promises made to induce him, her, or it to sign this Agreement are  
11 those stated herein. Having been fully advised and informed, each party voluntarily enters into  
12 this Agreement and the waiver of rights covered by this Agreement. Each plaintiff realizes that  
13 he or she has a right under the FLSA or any other federal or state laws to minimum wages and  
14 unpaid overtime as set forth in the FLSA or any other federal or state laws. Each party agrees  
15 that he or she is entering into this Settlement Agreement because of uncertainty over the outcome  
16 of the litigation and the potential for plaintiffs to receive anywhere from no damages to full  
17 liquidated damages and attorneys' fees should these actions proceed to a final judgment and is  
18 therefore not waiving any entitlement to overtime that he or she possessed under the FLSA or  
19 any other federal or state laws.

20 Each party understands, acknowledges, and agrees that this is a compromise settlement of  
21 disputed claims, and that nothing herein shall be deemed or construed at any time or for any  
22 purpose as an admission of the merits of any claim or defense.

23 **10.4 ASSIGNMENT OF RIGHTS BY PLAINTIFFS:**

24 Except for such assignments, transfers, or grants which may have occurred upon  
25 operation of law, the parties have not heretofore assigned, transferred, or granted, or purported to  
26 assign, transfer, or grant, any of the claims, demands, causes of action, obligations, liens,  
27 judgments, orders, damages, liabilities, losses, costs and expenses of any kind, in law or in  
28 equity, whether known or unknown, that parties now hold, will ever hold, or have ever held

1 against the other related to this case, including, but not limited to: 1) any and all claims,  
2 demands, or causes of action reflected in the lawsuit; 2) any and all claims, demands, or causes  
3 of action arising out of or in any way connected with any transactions, occurrences, acts or  
4 omissions set forth or alleged in the lawsuit; or 3) any and all claims, demands, or causes of  
5 action arising out of or in any way connected with any transactions, occurrences, acts or  
6 omissions occurring prior to the entry of a Stipulated Judgment by the Court.

7 **11. REIMBURSEMENTS:**

8 The parties further agree that the amounts to be paid by the City to Class Counsel  
9 pursuant to the Confidential Disbursement Order of this Agreement constitutes full compensation  
10 of the attorneys' fees and costs to which the *Brehm* and *Lara* plaintiffs are entitled by law from  
11 the City. Any additional fees and/or costs associated with the prosecuting of the *Brehm* and *Lara*  
12 actions shall be borne solely by the *Brehm* and *Lara* plaintiffs and/or Class Counsel.

13 **12. JURISDICTION:**

14 This Agreement, upon execution by the parties and entry of a Stipulated Judgment by the  
15 Court, shall have the effect of a binding judgment. In the event of breach of this Agreement by  
16 any of the parties, the Court shall have the authority to enforce any and all of the terms and  
17 conditions contained herein for a five (5) year period commencing with the Court's approval of  
18 the terms of this Agreement. If any action is instituted to enforce this Agreement, the Court shall  
19 have jurisdiction to award attorneys' fees and costs to the prevailing party.

20 **13. ENTIRE AGREEMENT IS INTEGRATED:**

21 The parties agree that the obligations contained in this Agreement are the sole and only  
22 consideration for it, and that no representations or inducements have been made by any party, or  
23 such party's employees, agents, or attorneys, except as specifically set forth in this Agreement.  
24 There is no other Agreement, written or oral, express or implied, between the parties with respect  
25 to the subject matter of this Agreement except as explicitly referred to herein. This Agreement  
26 supersedes any previous oral or written agreements or understandings between the parties  
27 regarding any matter contained in the Agreement. This Agreement cannot be amended,  
28 ///



1 modified, or supplemented in any respect except by a written agreement executed by the parties  
2 identified in section 20 of this Agreement.

3 **14. SUCCESSORS:**

4 This Agreement shall be binding upon plaintiffs and their heirs, representatives,  
5 executors, administrators, successors and assigns, and shall inure to the benefit of each and all of  
6 the heirs, representatives, executors, administrators, successors, and assigns.

7 **15. JOINT DRAFTING OF AGREEMENT:**

8 The *Brehm* and *Lara* plaintiffs, through their Class Counsel, and the City, through its  
9 attorneys, have participated in the drafting of this Agreement. The attorneys for all parties by  
10 their signature on this Agreement approve it as to form, and accordingly, the normal rule of  
11 construction to the effect that any ambiguities are to be resolved against the drafting parties will  
12 not be employed in any interpretation of this Agreement.

13 **16. STIPULATED JUDGMENT:**

14 Upon execution by the parties in the manner set forth above and the Court's  
15 determination that the Proposed Settlement is fair, adequate, and reasonable, this Agreement  
16 shall be submitted to the Court for entry of a stipulated judgment.

17 **17. WITHHOLDING OF TAXES FROM SETTLEMENT AMOUNTS:**

18 The parties agree and the Court so determines that the lump sum cash payments set forth  
19 in Confidential Disbursement Order (Attachment A) to the Agreement that are designated as  
20 back wages are wages subject to full withholding of federal and state income and other payroll  
21 withholding taxes.

22 The parties agree and the Court so determines that the cash payments set forth in the  
23 Confidential Disbursement Order (Attachment A) to this Agreement that are designated as  
24 liquidated damages and/or attorneys' fees and costs, are not wages. Since these amounts are not  
25 wages, the parties believe that such amounts are not subject to federal and state income or other  
26 payroll tax withholding requirements, although they may be taxable as gross income.

27 Plaintiffs are encouraged to consult with a tax advisor or attorney to determine  
28 independently any federal, state, or local tax consequences of the settlement amounts, and no



1 opinion on any tax matter is expressed herein. Plaintiffs are solely responsible for reporting  
2 amounts received as liquidated damages pursuant to this Agreement to any applicable federal,  
3 state or local agency as required by law.

4 The withholding of taxes with respect to the disbursement of funds classified as wages  
5 under the Confidential Disbursement Order will be made in accordance with the W-4 form each  
6 plaintiff has on file with the City. No taxes will be withheld from the disbursement of funds  
7 classified as liquidated damages under the Confidential Disbursement Order. The parties agree  
8 that the City may report funds paid as liquidated damages on IRS Form 1099 as compensation  
9 paid to each plaintiff and shall not withhold from or remit payment to the Internal Revenue  
10 Service on account of such payment. Plaintiffs will be responsible for any and all taxes  
11 associated with this lump-sum payment for liquidated damages as designated in the Confidential  
12 Disbursement Order.

13 **18. FORCE MAJEURE:**

14 If any act of God, riot, natural disaster, war, armed conflict, or other event of a similar  
15 nature occurs which substantially impairs the ability of a party to perform the terms of this  
16 Agreement, then either party may terminate the Agreement upon application and approval by the  
17 Court.

18 **19. SEVERABILITY:**

19 This Agreement shall be considered severable, such that if any provision or part of the  
20 Agreement is ever held invalid under any law or ruling, that provision or part of the Agreement  
21 shall remain in force and effect to the extent allowed by law, and all other provisions or parts  
22 shall remain in full force and effect.

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1       **20.    EXECUTION OF THIS AGREEMENT:**

2               **20.1   EXECUTION BY THE CITY:**

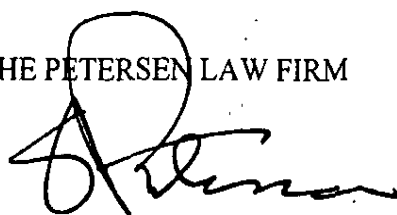
3               The Charter for the City provides that only the City Council has authority to enter into  
4 this Agreement. Therefore, this Agreement may only be approved by the City by an action of the  
5 City Council.

6               **20.2   EXECUTION BY THE PLAINTIFFS:**

7               This Agreement will be executed on behalf of plaintiffs by Class Counsel.


8  
9                               THE PETERSEN LAW FIRM

10  
11 DATED: 12/19, 2002

  
GREGORY G. PETERSEN, ESQ., Class Counsel  
in *Brehm v. City of Los Angeles* and *Lara v. City of Los Angeles*

12  
13  
14                               CITY OF LOS ANGELES

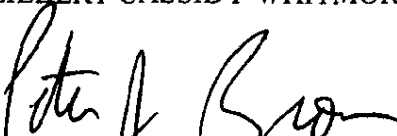
15  
16 DATED: 1/9, 200<sup>3</sup><sub>7</sub>

17 By:   
GARY G. GELUSS  
Assistant City Attorney

18       **APPROVED AS TO FORM:**

19  
20                               LIEBERT CASSIDY WHITMORE

21  
22 DATED: 12/26, 2002

23 By:   
PETER J. BROWN  
Attorneys for Defendant, City of Los Angeles

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

I am employed in the county of Orange, state of California. I am over the age of eighteen and not a party to the within action; my business address is: 4675 MacArthur Court, Suite 1250, Newport Beach, California 92660.

On February 14, 2006, I served the within **[PROPOSED] STIPULATED JUDGMENT** by placing \_\_\_\_\_ the original /  X  a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

Brian Walter, Esq.  
LIEBERT CASSIDY WHITMORE  
6033 West Century Blvd., Ste 601  
Los Angeles, California 90045

Attorneys for Defendant,  
CITY OF LOS ANGELES

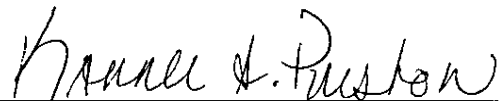
(X) **BY MAIL:** I am "readily familiar" with this firm's practice of collection, processing, and depositing mail, with postage fully prepaid, with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that, on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing as stated in the affidavit.

( ) **BY FACSIMILE:** In addition to the above service by mail, hand delivery, or Federal Express, I caused said document(s) to be transmitted by facsimile to the addressee(s).

( ) **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(X) **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made.

Executed on February 14, 2006, at Newport Beach, California.

  
Karle A. Preston